The result was announced—yeas 36, nays 18, as follows:

YEAS—36.

Aldrich	Clark, Wyo.	Flint	Nelson
Bourne	Cullom	Frye	Nixon
Bradley	Cummins	Gallinger	Page
Briggs	Curtis	Gamble	Penrose
Brown	Depew	Heyburn	Perkins
Burkett	Dick	Johnson, N. Dak.	Root
Burnham	Dillingham	Jones	Smoot
Burrows	Dixon	Kean	Sutherland
Carter	Dolliver	McCumber	Wetmore

NAYS—18.

Bacon	Davis	Johnston, Ala.	Shively
Bristow	Fletcher	La Follette	Simmons
Burton	Frazier	McEnery	Stone
Crawford	Gore	McLaurin	
Culberson	Hughes	Newlands	

NOT VOTING—38.

Bailey	Crane	Money	Smith, Mich.
Bankhead	Daniel	Oliver	Smith, S. C.
Beveridge	du Pont	Overman	Stephenson
Borah	Elkins	Owen	Tallaferro
Brandegee	Foster	Paynter	Taylor
Bulkeley	Guggenheim	Piles	Tillman
Chamberlain	Hale	Rayner	Warner
Clapp	Lodge	Richardson	Warren
Clarke, Ark.	Lorimer	Scott	
Clay	Martin	Smith, Md.	

So the amendment of Mr. ALDRICH was agreed to.

EXECUTIVE SESSION.

Mr. ALDRICH. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to, and the Senate proceeded to the consideration of executive business. After five minutes spent in executive session the doors were reopened, and (at 4 o'clock and 45 minutes p. m.) the Senate adjourned until Monday, July 5, 1909, at 10 o'clock a. m.

NOMINATIONS.

Executive nominations received by the Senate July 3, 1909.

COLLECTOR OF CUSTOMS.

William R. Leaken, of Georgia, to be collector of customs for the district of Savannah, in the State of Georgia, in place of John H. Deveaux, deceased.

ASSISTANT COMMISSIONER OF INDIAN AFFAIRS.

Fred H. Abbott, of Aurora, Nebr., to be Assistant Commissioner of Indian Affairs, vice Robert G. Valentine, promoted.

PROMOTIONS IN THE ARMY.

COAST ARTILLERY CORPS.

First Lieut. William P. Platt, Coast Artillery Corps (captain, by detail, in the Ordnance Department), to be captain from July 1, 1909, vice Capt. Leroy T. Hillman, detailed in the Ordnance Department on that date.

First Lieut. Edward M. Shinkle, Coast Artillery Corps (captain, by detail, in the Ordnance Department), to be captain from July 1, 1909, vice Capt. William P. Platt, whose detail in the Ordnance Department is continued from that date.

First Lieut. William R. Bettison, Coast Artillery Corps, to be captain from July 1, 1909, vice Capt. Edward M. Shinkle, whose detail in the Ordnance Department is continued from that date.

Second Lieut. Robert R. Welshimer, Coast Artillery Corps, to be first lieutenant from July 1, 1909, vice First Lieut. William R. Bettison, promoted.

Second Lieut. William W. Hicks, Coast Artillery Corps, to be first lieutenant from July 1, 1909, vice First Lieut. Morgan L. Brett, detailed in the Ordnance Department on that date.

Second Lieut. Eugene B. Walker, Coast Artillery Corps, to be first lieutenant from July 1, 1909, vice First Lieut. Richard H. Somers, detailed in the Ordnance Department on that date.

Second Lieut. Karl F. Baldwin, Coast Artillery Corps, to be first lieutenant from July 1, 1909, vice First Lieut. Thomas L. Coles, detailed in the Ordnance Department on that date.

Second Lieut. Charles K. Wing, Coast Artillery Corps, to be first lieutenant from July 1, 1909, vice First Lieut. John B. Rose, detailed in the Ordnance Department on that date.

PROMOTIONS IN THE NAVY.

The following-named machinists to be chief machinists in the navy from the 3d of March, 1909, upon the completion of six years' service, in accordance with the provisions of an act of Congress approved March 3, 1909:

William R. Scofield,
Henry Smith,
William W. Booth,
John H. Busch,
William E. Stiles, and
Adolph A. Gathemann.

CONFIRMATIONS.

Executive nominations confirmed by the Senate July 3, 1909.

ASSISTANT COMMISSIONER OF INDIAN AFFAIRS.

Fred H. Abbott to be Assistant Commissioner of Indian Affairs.

MEMBERS OF THE BOARD OF CHARITIES.

John Joy Edson to be a member of the Board of Charities of the District of Columbia.

George M. Kober to be a member of the Board of Charities of the District of Columbia.

APPOINTMENT, BY TRANSFER, IN THE ARMY.

FIELD ARTILLERY.

Second Lieut. Herbert Hayden, Third Infantry, to the field artillery.

POSTMASTERS.

KENTUCKY.

C. F. Taylor, at Greenup, Ky.

SOUTH DAKOTA.

Horace M. Green, at Alcester, S. Dak.
William Lester, at Lake Andes, S. Dak.
Frank B. Williams, at Hurley, S. Dak.

TENNESSEE.

William F. Littleton, at Kingston, Tenn.
Elisha Thomas McKinney, at Harriman, Tenn.

SENATE.

MONDAY, *July 5, 1909.*

The Senate met at 10 o'clock a. m.

The Chaplain, Rev. Ulysses G. B. Pierce, D. D., offered the following prayer:

Almighty God, who didst lead our fathers into a large place and didst set their feet in the path of liberty, be with us, we pray Thee, even as in the elder days. Defend our country from all violence without and from all strife within, delivering us alike from pride and from shame. Make Thou our rulers righteousness and our officers peace, and write Thy laws into the hearts of this people. So guide and protect us, our Father, that by the continuance of Thy gracious favor we may indeed be that happy Nation whose God is the Lord. Amen.

The Journal of the proceedings of Saturday last was read and approved.

PETITIONS AND MEMORIALS.

Mr. KEAN. I present a communication, in the nature of a memorial, from the Fourteenth Ward Building and Loan Association, of Newark, N. J., which I ask may be read.

There being no objection, the communication was read and ordered to lie on the table, as follows:

THE FOURTEENTH WARD
BUILDING AND LOAN ASSOCIATION OF THE CITY OF NEWARK,
No. 10 Elizabeth avenue, Newark, N. J., July 1, 1909.

Hon. JOHN KEAN,
United States Senate, Washington, D. C.

DEAR SIR: The undersigned executive officers of the Fourteenth Ward Building and Loan Association of the city of Newark, N. J., representing a membership of 2,500 individuals, wage-earners all, desire to enter a protest in the name of these members against the tax proposed in the pending tariff bill on net earnings of corporations and to respectfully request that special exemption be made of all such associations, for the reason that the investment represents the savings of a class of wage-earners whose income is limited and who would not be considered in any scheme looking to the replenishment of the National Treasury, but who should be, on the contrary, peculiarly exempt from such tax.

It will be recalled that this exemption was made in the last income-tax measure, and every argument advanced then applies now.

Respectfully submitted.

[SEAL.] A. M. LINNETT, *President.*
WM. C. MORTON, *Treasurer.*

Attest:
F. N. UTTER, *Assistant Secretary.*

Mr. KEAN presented a memorial of the board of directors of the Second National Bank of Phillipsburg, N. J., remonstrating against the adoption of the so-called "income-tax amendment" to the pending tariff bill, which was ordered to lie on the table.

He also presented a petition of the Building and Loan Association of Belmar, N. J., praying for the adoption of a certain amendment to the so-called "corporation-tax amendment" to the pending tariff bill exempting building and loan associations from the provisions contained therein, which was ordered to lie on the table.

Mr. SCOTT presented a memorial of sundry citizens of Wheeling, W. Va., remonstrating against the adoption of the so-called "corporation-tax amendment" to the pending tariff bill, which was ordered to lie on the table.

Mr. BURTON presented a memorial of sundry citizens of Toledo, Ohio, indorsing the action of the United States Senate in protecting the lemon industry of the United States, which was ordered to lie on the table.

Mr. DEPEW presented a petition of the Chamber of Commerce of Syracuse, N. Y., praying for the appointment of a permanent tariff commission, which was ordered to lie on the table.

He also presented a memorial of the Collar and Shirt Manufacturers' Association, of Troy, N. Y., remonstrating against the adoption of the so-called "corporation-tax amendment" to the pending tariff bill, which was ordered to lie on the table.

He also presented petitions of the East Brooklyn Cooperative Building Association, of Brooklyn; the North New York Cooperative Building and Loan Association, the Homestead Aid Association, of Utica; the Franklin Society for Building and Savings; the New York State League of Cooperative Savings and Loan Associations, of Watertown; the Schenectady Building Loan and Savings Institution, of Schenectady; the East New York Cooperative Savings and Building Loan Association, of New York; the Brooklyn Mutual Building and Loan Association, of Brooklyn; the West End Savings and Loan Association, of Albany; the Safety Building Loan and Savings Association, of Albany; the Corning Cooperative Savings and Loan Association, of Corning; the Kingston Cooperative Savings and Loan Association; the Gowanda Savings and Loan Association, of Gowanda; and the Richmond County Building and Mutual Loan Association, of Staten Island, all in the State of New York, praying for the adoption of a certain amendment to the so-called "corporation-tax amendment" to the pending tariff bill exempting building and loan associations from the provisions contained therein, which were ordered to lie on the table.

NATIONAL ENCAMPMENT AT SALT LAKE CITY, UTAH.

Mr. WARREN. The joint resolution (H. J. Res. 54) authorizing the Secretary of War to loan cots, tents, and appliances for the use of the forty-third national encampment of the Grand Army of the Republic at Salt Lake City, Utah, passed the House, and was referred to the Committee on Military Affairs. As the time for the encampment is near at hand, and as long-distance transportation of the articles desired must necessarily be slow and uncertain, I report back the joint resolution from the committee favorably without amendment, and ask unanimous consent that it be put on its passage at this time.

The Secretary read the joint resolution, and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration.

The joint resolution was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

BILLS INTRODUCED.

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. DEPEW:

A bill (S. 2830) granting an increase of pension to Charles M. Catlin (with accompanying paper); and

A bill (S. 2831) granting an increase of pension to George P. Price (with accompanying paper); to the Committee on Pensions.

By Mr. NIXON:

A bill (S. 2832) granting an increase of pension to Charles E. Bowling; to the Committee on Pensions.

By Mr. LA FOLLETTE:

A bill (S. 2833) for the relief of certain purchasers of lots in the Fort Crawford military tract at Prairie du Chien, State of Wisconsin; to the Committee on Private Land Claims.

C. P. SCHENCK.

Mr. CUMMINS submitted the following resolution (S. Res. 64), which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Senate resolution 64.

Resolved, That the Secretary of the Senate be, and is hereby, authorized to pay to C. P. Schenck, out of the contingent fund of the Senate, the sum of $76 for services as messenger from March 4 to March 22, 1909, inclusive.

THE TARIFF.

The VICE-PRESIDENT. The morning business is closed, and the first bill on the calendar will be proceeded with.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes.

Mr. ALDRICH. On behalf of the Committee on Finance, I move the following amendment——

Mr. BRISTOW. Mr. President, I suggest the absence of a quorum.

The VICE-PRESIDENT. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Aldrich	Crane	Gamble	Scott
Bacon	Culberson	Guggenheim	Simmons
Beveridge	Cullom	Heyburn	Smoot
Briggs	Cummins	Johnson, N. Dak.	Stephenson
Bristow	Curtis	Johnston, Ala.	Stone
Brown	Daniel	Jones	Sutherland
Burkett	Davis	Kean	Taliaferro
Burnham	Dick	McCumber	Taylor
Burrows	Dillingham	Nelson	Warner
Burton	Dixon	Nixon	Warren
Carter	Fletcher	Overman	Wetmore
Chamberlain	Flint	Page	
Clapp	Foster	Perkins	
Clark, Wyo.	Gallinger	Root	

Mr. JONES. I desire to state that my colleague [Mr. PILES] is out of the city on important business.

The VICE-PRESIDENT. Fifty-three Senators have answered to the roll call. A quorum of the Senate is present.

Mr. BRISTOW. I desire to offer an amendment to Senate joint resolution No. 40, proposing an amendment to the Constitution of the United States.

The VICE-PRESIDENT. The Secretary will first read the amendment sent to the desk by the Senator from Rhode Island, and then the Chair will recognize the Senator from Kansas for that purpose. The amendment submitted by the Senator from Rhode Island has been heretofore read, and if there is no objection, it will not be read again.

Mr. ALDRICH. It is not necessary to read it, but perhaps it should be considered by sections.

The amendment reported by Mr. ALDRICH, from the Committee on Finance, April 30, 1909, was to add to the bill, as a new section, the following:

SEC. 3. That the act entitled "An act to simplify the laws in relation to the collection of the revenues," approved June 10, 1890, as amended, be further amended to read as follows:

"SEC. 1. That all merchandise imported into the United States shall, for the purpose of this act, be deemed and held to be the property of the person to whom the same is consigned; and the holder of a bill of lading duly indorsed by the consignee therein named, or, if consigned to order, by the consignor, shall be deemed the consignee thereof; and in case of the abandonment of any merchandise to the underwriters the latter may be recognized as the consignee.

"SEC. 2. That all invoices of imported merchandise shall be made out in the currency of the place or country from whence the importations shall be made, or, if purchased, in the currency actually paid therefor, shall contain a correct description of such merchandise, and shall be made in triplicate or quadruplicate in case of merchandise intended for immediate transportation without appraisement, and signed by the person owning or shipping the same, if the merchandise has been actually purchased, or by the manufacturer or owner thereof, if the same has been procured otherwise than by purchase, or by the duly authorized agent of such purchaser, seller, manufacturer or owner.

"SEC. 3. That all such invoices shall, at or before the shipment of the merchandise, be produced to the consul, vice-consul, or commercial agent of the United States of the consular district in which the merchandise was manufactured or purchased, as the case may be, for export to the United States, and shall have indorsed thereon, when so produced, a declaration signed by the purchaser, seller, manufacturer, owner, or agent, setting forth that the invoice is in all respects correct and true, and was made at the place from which the merchandise is to be exported to the United States; that it contains, if the merchandise was obtained by purchase, a true and full statement of the time when, the place where, the person from whom the same was purchased, and the actual cost thereof, and of all charges thereon, as provided by this act; and that no discounts, bounties, or drawbacks are contained in the invoice but such as have been actually allowed thereon; and when obtained in any other manner than by purchase, the actual market value or wholesale price thereof, at the time of exportation to the United States, in the principal markets of the country from whence exported; that such actual market value is the price at which the merchandise described in the invoice is freely offered for sale to all purchasers in said markets, and that it is the price which the manufacturer or owner making the declaration would have received, and was willing to receive, for such merchandise sold in the ordinary course of trade in the usual wholesale quantities, and that it includes all charges thereon as provided by this act, and the actual quantity thereof; and that no different invoice of the merchandise mentioned in the invoice so produced has been or will be furnished to anyone. If the merchandise was actually purchased, the declaration shall also contain a statement that the currency in which such invoice is made out is that which was actually paid for the merchandise by the purchaser.

"SEC. 4. That, except in case of personal effects accompanying the passenger, no importation of any merchandise exceeding $100 in value shall be admitted to entry without the production of a duly certified invoice thereof as required by law, or of an affidavit made by the owner, importer, or consignee, before the collector or his deputy, showing why it is impracticable to produce such invoice; and no entry shall be made in the absence of a certified invoice, upon affidavit as aforesaid, unless such affidavit be accompanied by a statement in the form of an invoice, or otherwise, showing the actual cost of such merchandise, if purchased, or if obtained otherwise than by purchase, the actual market value or wholesale price thereof at the time of exportation to the United States in the principal markets of the country from which the same has been imported; which statement shall be verified by the oath of the owner, importer, consignee, or agent desiring to make entry of the merchandise, to be administered by the collector or his deputy, and it shall be lawful for the collector or his deputy to examine the deponent under oath, touching the sources of his knowledge, information, or belief, in the

premises, and to require him to produce any letter, paper, or statement of account in his possession, or under his control, which may assist the officers of customs in ascertaining the actual value of the importation or any part thereof, and in default of such production, when so requested, such owner, importer, consignee, or agent shall be thereafter debarred from producing any such letter, paper, or statement for the purpose of avoiding any additional duty, penalty, or forfeiture incurred under this act, unless he shall show to the satisfaction of the court or the officers of the customs, as the case may be, that it was not in his power to produce the same when so demanded; and no merchandise shall be admitted to entry under the provisions of this section unless the collector shall be satisfied that the failure to produce a duly certified invoice is due to causes beyond the control of the owner, consignee, or agent thereof: *Provided*, That the Secretary of the Treasury may make regulations by which books, magazines, and other periodicals published and imported in successive parts, numbers, or volumes, and entitled to be imported free of duty, shall require but one declaration for the entire series. And when entry of merchandise exceeding $100 in value is made by a statement in the form of an invoice, the collector shall require a bond for the production of a duly certified invoice.

"SEC. 5. That whenever merchandise imported into the United States is entered by invoice, one of the following declarations, according to the nature of the case, shall be filed with the collector of the port at the time of entry by the owner, importer, consignee, or agent, which declaration so filed shall be duly signed by the owner, importer, consignee, or agent before the collector, or before a notary public or other officer duly authorized by law to administer oaths and take acknowledgments, who may be designated by the Secretary of the Treasury to receive such declarations and to certify to the identity of the persons making them, under regulations to be prescribed by the Secretary of the Treasury; and every officer so designated shall file with the collector of the port a copy of his official signature and seal: *Provided*, That if any of the invoices or bills of lading of any merchandise imported in any one vessel which should otherwise be embraced in said entry, have not been received at the date of the entry, the declaration may state the fact, and thereupon such merchandise, of which the invoices or bills of lading are not produced, shall not be included in such entry, but may be entered subsequently.

"DECLARATION OF CONSIGNEE, IMPORTER, OR AGENT, WHERE MERCHANDISE HAS BEEN ACTUALLY PURCHASED.

"I, ——— ———, do solemnly and truly declare that I am the consignee, importer, or agent of the merchandise described in the annexed entry and invoice; that the invoice and bill of lading now presented by me to the collector of ——— are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the ———, whereof ——— is master, from ———, for account of any persen whomsoever for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know or believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise, according to the said invoice and bill of lading; that nothing has been on my part, nor to my knowledge on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purport to have been made; and that if at any time hereafter I discover any error in the said invoice, or in the account now rendered of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly and truly declare that to the best of my knowledge and belief (insert the name and residence of the owner or owners) is (or are) the owner (or owners) of the goods, wares, and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual cost at the time of exportation to the United States in the principal markets of the country from whence imported of the said goods, wares, and merchandise, and includes and specifies the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids, which are not otherwise specially subject to duty under any paragraph of the tariff act, and all other costs, charges, and expenses incident to placing said goods, wares, and merchandise in condition, packed ready for shipment to the United States, and no other or different discount, bounty, or drawback but such as has been actually allowed on the same.

"DECLARATION OF CONSIGNEE, IMPORTER, OR AGENT WHERE MERCHANDISE HAS NOT BEEN ACTUALLY PURCHASED.

"I, ——— ———, do solemnly and truly declare that I am the consignee, importer, or agent of the merchandise described in the annexed entry and invoice; that the invoice and bill of lading now presented by me to the collector of ——— are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the ———, whereof ——— is master, from ———, for account of any person whomsoever for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know or believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise, according to the said invoice and bill of lading; that nothing has been on my part, nor to my knowledge on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purport to have been made; and that if at any time hereafter I discover any error in the said invoice, or in the account now rendered of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district. And I do further solemnly and truly declare that to the best of my knowledge and belief (insert the name and residence of the owner or owners) is (or are) the owner (or owners) of the goods, wares, and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual market value or wholesale price at the time of exportation to the United States in the principal markets of the country from whence imported of the said goods, wares, and merchandise, and includes and specifies the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids, which are not otherwise specially subject to duty under any paragraph of the tariff act, and all other costs, charges, and expenses incident to placing said goods, wares, and merchandise in condition, packed ready for shipment to the United States, and no other or different discount, bounty, or drawback but such as has been actually allowed on the same.

"DECLARATION OF OWNER IN CASES WHERE MERCHANDISE HAS BEEN ACTUALLY PURCHASED.

"I, ——— ———, do solemnly and truly declare that I am the owner by purchase of the merchandise described in the annexed entry and invoice; that the entry now delivered by me to the collector of ——— contains a just and true account of all the goods, wares, and merchandise imported by or consigned to me in the ———, whereof ——— is master, from ———; that the invoice and entry, which I now produce, contain a just and faithful account of the actual cost of the said goods, wares, and merchandise, and include and specify the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids, which are not otherwise specially subject to duty under any paragraph of the tariff act, and all other costs, charges, and expenses incident to placing said goods, wares, and merchandise in condition, packed ready for shipment to the United States, and no other discount, drawback, or bounty but such as has been actually allowed on the same; that I do not know nor believe in the existence of any invoice or bill of lading other than those now produced by me, and that they are in the state in which I actually received them. And I further solemnly and truly declare that I have not in the said entry or invoice concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that to the best of my knowledge and belief the said invoice and the declaration thereon are in all respects true, and were made by the person by whom the same purport to have been made, and that if at any time hereafter I discover any error in the said invoice or in the account now produced of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district.

"DECLARATION OF MANUFACTURER OR OWNER IN CASES WHERE MERCHANDISE HAS NOT BEEN ACTUALLY PURCHASED.

"I, ——— ———, do solemnly and truly declare that I am the owner (or manufacturer) of the merchandise described in the annexed entry and invoice; that the entry now delivered by me to the collector of ——— contains a just and true account of all the goods, wares, and merchandise imported by or consigned to me in the ———, whereof ——— ——— is master, from ———; that the said goods, wares, and merchandise were not actually bought by me, or by my agent, in the ordinary mode of bargain and sale, but that nevertheless the invoice which I now produce contains a just and faithful valuation of the same, at their actual market value or wholesale price, at the time of exportation to the United States, in the principal markets of the country from whence imported for my account (or for account of myself or partners); that such actual market value is the price at which the merchandise described in the invoice is freely offered for sale to all purchasers in said markets and is the price which I would have received and was willing to receive for such merchandise sold in the ordinary course of trade in the usual wholesale quantities; that the said invoice contains also a just and faithful account of all the cost of finishing said goods, wares, and merchandise to their present condition, and includes and specifies the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids, which are not otherwise specially subject to duty under any paragraph of the tariff act, and all other costs and charges incident to placing said goods, wares, and merchandise in condition, packed ready for shipment to the United States, and no other discount, drawback, or bounty but such as has been actually allowed on the said goods, wares, and merchandise; that the said invoice and the declaration thereon are in all respects true, and were made by the person by whom the same purports to have been made; that I do not know nor believe in the existence of any invoice or bill of lading other than those now produced by me, and that they are in the state in which I actually received them. And I do further solemnly and truly declare that I have not in said entry or invoice concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; and that if at any time hereafter I discover any error in the said invoice, or in the accounts now produced of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district.

"SEC. 6. That any person who shall knowingly make any false statement in the declarations provided for in the preceding section, or shall aid or procure the making of any such false statement as to any matter material thereto, shall, on conviction thereof, be punished by a fine not exceeding $5,000, or by imprisonment at hard labor not more than two years, or both, in the discretion of the court: *Provided*, That nothing in this section shall be construed to relieve imported merchandise from forfeiture by reason of such false statement or for any cause elsewhere provided by law.

"SEC. 7. That the owner, consignee, or agent of any imported merchandise may, at the time when he shall make and verify his written entry of such merchandise, but not afterwards, make such addition in the entry to or such deduction from the cost or value given in the invoice or pro forma invoice or statement in form of an invoice, which he shall produce with his entry, as in his opinion may raise or lower the same to the actual market value or wholesale price of such merchandise at the time of exportation to the United States, in the principal markets of the country from which the same has been imported; and the collector within whose district any merchandise may be imported or entered, whether the same has been actually purchased or procured otherwise than by purchase, shall cause the actual market value or wholesale price of such merchandise to be appraised; and if the appraised value of any article of imported merchandise subject to an ad valorem duty or to a duty based upon or regulated in any manner by the value thereof shall exceed the value declared in the entry, there shall be levied, collected, and paid, in addition to the duties imposed by law on such merchandise, an additional duty of 1 per cent of the total appraised value thereof for each 1 per cent that such appraised value exceeds the value declared in the entry; but the additional duties shall only apply to the particular article or articles in each invoice that are so undervalued and shall not be imposed upon any article upon which the amount of duty imposed by law on account of the appraised value does not exceed the amount of duty that would be imposed if the

appraised value did not exceed the entered value, and shall be limited to 50 per cent of the appraised value of such article or articles. Such additional duties shall not be construed to be penal, and shall not be remitted nor payment thereof in any way avoided except in cases arising from a manifest clerical error, and whenever additional duties have been imposed upon merchandise the same shall not be refunded in case of exportation of the merchandise, nor shall they be subject to the benefit of drawback: *Provided*, That if the appraised value of any merchandise shall exceed the value declared in the entry by more than 50 per cent, except when arising from a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs shall seize such merchandise and proceed as in case of forfeiture for violation of the customs laws, and in any legal proceeding that may result from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same, and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence. The forfeiture provided for in this section shall apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles in each invoice which are undervalued: *Provided further*, That all additional duties, penalties, or forfeitures applicable to merchandise entered by a duly certified invoice shall be alike applicable to merchandise entered by a pro forma invoice or statement in the form of an invoice, and no forfeiture or disability of any kind incurred under the provisions of this section shall be remitted or mitigated by the Secretary of the Treasury. The duty shall not, however, be assessed in any case upon an amount less than the entered value.

"SEC. 8. That when merchandise entered for customs duty has been consigned for sale by or on account of the manufacturer thereof, to a person, agent, partner, or consignee in the United States, such person, agent, partner, or consignee shall, at the time of the entry of such merchandise, present to the collector of customs at the port where such entry is made, as a part of such entry and in addition to the certified invoice or statement in the form of an invoice required by law, a statement signed by such manufacturer, declaring the cost of production of such merchandise, such cost to include all the elements of cost as stated in section 11 of this act. When merchandise entered for customs duty has been consigned for sale by or on account of a person other than the manufacturer of such merchandise to a person, agent, partner, or consignee in the United States, such person, agent, partner, or consignee shall at the time of the entry of such merchandise present to the collector of customs at the port where such entry is made, as a part of such entry, a statement signed by the consignor thereof, declaring that the merchandise was actually purchased by him or for his account, and showing the time when, the place where, and from whom he purchased the merchandise, and in detail the price he paid for the same: *Provided*, That the statements required by this section shall be made in triplicate, and shall bear the attestation of the consular officer of the United States resident within the consular district wherein the merchandise was manufactured, if consigned by the manufacturer or for his account, or from whence it was imported when consigned by a person other than the manufacturer, one copy thereof to be delivered to the person making the statement, one copy to be transmitted with the triplicate invoice of the merchandise to the collector of the port in the United States to which the merchandise is consigned, and the remaining copy to be filed in the consulate.

"SEC. 9. That if any consignor, seller, owner, importer, consignee, agent, or other person or persons shall enter or introduce, or attempt to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or shall be guilty of any willful act or omission by means whereof the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, affidavit, letter, paper, or statement, or effected by such act or omission, such merchandise, or the value thereof, to be recovered from such person or persons, shall be forfeited, which forfeiture shall only apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles of merchandise to which such fraud or false paper or statement relates; and such person or persons shall, upon conviction, be fined for each offense a sum not exceeding $5,000, or be imprisoned for a time not exceeding two years, or both, in the discretion of the court.

"SEC. 10. That it shall be the duty of the appraisers of the United States, and every of them, and every person who shall act as such appraiser, or of the collector, as the case may be, by all reasonable ways and means in his or their power to ascertain, estimate, and appraise (any invoice or affidavit thereto or statement of cost, or of cost of production to the contrary notwithstanding) the actual market value and wholesale price of the merchandise at the time of exportation to the United States, in the principal markets of the country whence the same has been imported, and the number of yards, parcels, or quantities, and actual market value or wholesale price of every of them, as the case may require.

"SEC. 11. That when the actual market value, as defined by law, of any article of imported merchandise, wholly or partly manufactured and subject to an ad valorem duty, or to a duty based in whole or in part on value, can not be ascertained to the satisfaction of the appraising officer, such officer shall use all available means in his power to ascertain the cost of production of such merchandise at the time of exportation to the United States, and at the place of manufacture, such cost of production to include the cost of materials and of fabrication, and all general expenses, to be estimated at not less than 10 per cent, covering each and every outlay of whatsoever nature incident to such production, together with the expense of preparing and putting up such merchandise ready for shipment, and an addition of not less than 8 nor more than 50 per cent upon the total cost as thus ascertained; and in no case shall such merchandise be appraised upon original appraisal or reappraisement at less than the total cost of production as thus ascertained. The actual market value or wholesale price, as defined by law, of any imported merchandise which is consigned for sale in the United States, or which is sold for exportation to the United States, and which is not actually sold or freely offered for sale in usual wholesale quantities in the open market of the country of exportation to all purchasers, shall not in any case be appraised at less than the wholesale price at which such or similar imported merchandise is actually sold or freely offered for sale in usual wholesale quantities in the United States in the open market, due allowance by deduction being made for estimated duties thereon, cost of transportation, insurance and other necessary expenses from the place of shipment to the place of delivery, and a commission not exceeding 6 per cent, if any has been paid or contracted to be paid.

"SEC. 12. That there shall be appointed by the President, by and with the advice and consent of the Senate, nine general appraisers of merchandise. Not more than five of such general appraisers shall be appointed from the same political party. They shall not be engaged in any other business, avocation, or employment.

"All of the general appraisers of merchandise heretofore or hereafter appointed under the authority of said act shall hold their office during good behavior, but may, after due hearing, be removed by the President for the following causes, and no other: Neglect of duty, malfeasance in office, or inefficiency.

"That hereafter the salary of each of the general appraisers of merchandise shall be at the rate of $9,000 per annum.

"That the said boards of general appraisers and the members thereof shall have and possess all the powers of a circuit court of the United States in preserving order, compelling the attendance of witnesses, and the production of evidence, and in punishing for contempt.

"All notices in writing to collectors of dissatisfaction of any decision thereof, as to the rate or amount of duties chargeable upon imported merchandise, including all dutiable costs and charges, and as to all fees and exactions of whatever character (except duties on tonnage), with the invoice and all papers and exhibits, shall be forwarded to the board of nine general appraisers of merchandise at New York to be by rule thereof assigned for hearing or determination, or both. The President of the United States shall designate one of the board of nine general appraisers of merchandise as president of said board and others in order to act in his absence. Said general appraisers of merchandise shall be divided into three boards of three members each, to be denominated, respectively, Board 1, Board 2, and Board 3. The president of the board shall assign three general appraisers to each of said boards and shall designate one member of each of said boards as chairman thereof, and such assignment or designation may be by him changed from time to time, and he may assign or designate all boards of three general appraisers where it is now or heretofore was provided by law that such might be assigned or designated by the Secretary of the Treasury. The president of the board shall be competent to sit as a member of any board, or assign one or two other members thereto, in the absence or inability of any one or two members of such board. Each of the boards of three general appraisers, or a majority thereof, shall have full power to hear and determine all cases and questions arising therein or assigned thereto; and the general board of nine general appraisers, and each of the general appraisers of merchandise, shall have all the jurisdiction and powers and proceed as now, heretofore, and herein provided. The said board of 9 general appraisers shall have power to establish from time to time such rules of evidence, practice, and procedure, not inconsistent with the statutes, as may be deemed necessary for the conduct and uniformity of its proceedings and decisions and the proceedings and decisions of the boards of three thereof; and for the production, care, and custody of samples and records of said board. The president of the board shall have control of the fiscal affairs and the clerical force of the board, make all recommendations for appointment, promotion, and otherwise affecting said clerical force; he may at any time before trial under the rules of said board assign or reassign any case for hearing, determination, or both, and shall designate a general appraiser or a board of general appraisers to proceed to any port within the jurisdiction of the United States for the purpose of hearing, or determining if authorized by law, causes assigned for hearing at such port, and shall cause to be prepared and duly promulgated dockets therefor. No member of any of said boards shall sit to hear or decide any case on appeal in the decision of which he may have previously participated. The board of three general appraisers, or a majority of them, who decided the case, may, upon motion of either party made within thirty days next after their decision, grant a rehearing or retrial of said case when in their opinion the ends of justice may require it.

"SEC. 13. That the appraiser shall revise and correct the reports of the assistant appraisers, as he may judge proper; and the appraiser, or, at ports where there is no appraiser, the person acting as such, shall report to the collector his decision as to the value of the merchandise appraised. At ports where there is no appraiser the certificate of the customs officer to whom is committed the estimating and collection of duties, of the dutiable value of any merchandise required to be appraised, shall be deemed and taken to be the appraisement of such merchandise. If the collector shall deem the appraisement of any imported merchandise too low, he may, within sixty days thereafter, appeal to reappraisement, which shall be made by one of the general appraisers, or if the importer, owner, agent, or consignee of such merchandise shall be dissatisfied with the appraisement thereof, and shall have complied with the requirements of law with respect to the entry and appraisement of merchandise, he may, within ten days thereafter, give notice to the collector, in writing, of such dissatisfaction. The decision of the general appraiser in cases of reappraisement shall be final and conclusive as to the dutiable value of such merchandise against all parties interested therein, unless the importer, owner, consignee, or agent of the merchandise shall be dissatisfied with such decision, and shall, within ten days thereafter, give notice to the collector, in writing, of such dissatisfaction, or unless the collector shall deem the reappraisement of the merchandise too low, and shall, within ten days thereafter, appeal to re-reappraisement; in either case the collector shall transmit the invoice and all the papers appertaining thereto to the board of nine general appraisers, to be by rule thereof duly assigned for determination. In such cases the general appraiser and boards of general appraisers shall proceed by all reasonable ways and means in their power to ascertain, estimate, and determine the dutiable value of the imported merchandise, and in so doing may exercise both judicial and inquisitorial functions. In such cases hearings may in the discretion of the general appraiser or Board of General Appraisers, before whom the case is pending be open, and in the presence of the importer or his attorney and any duly authorized representative of the Government, who may in like discretion examine and cross-examine all witnesses produced. The decision of the appraiser, or single general appraiser in case of no appeal, and of the board of three general appraisers in all reappraisement cases, shall be final and conclusive against all parties and shall not be subject to review in any manner for any cause in any tribunal or court, and the collector or the person acting as such shall ascertain, fix, and liquidate the rate and amount of the duties to be paid on such merchandise, and the dutiable costs and charges thereon, according to law.

"SEC. 14. That the decision of the collector as to the rate and amount of duties chargeable upon imported merchadnise, including all dutiable costs and charges, and as to all fees and exactions of whatever char-

acter (except duties on tonnage), shall be final and conclusive against all persons interested therein, unless the owner, importer, consignee, or agent of such merchandise, or the person paying such fees, charges, and exactions other than duties, shall, within fifteen days after but not before such ascertainment and liquidations of duties, as well in cases of merchandise entered in bond as for consumption, or within fifteen days after the payment of such fees, charges, and exactions, if dissatisfied with such decision, give notice in writing to the collector, setting forth therein distinctly and specifically, and in respect to each entry or payment, the reasons for his objections thereto, and if the merchandise is entered for consumption shall pay the full amount of the duties and charges ascertained to be due thereon. Upon such notice and payment the collector shall transmit the invoice and all the papers and exhibits connected therewith to the board of nine general appraisers, for due assignment and determination as hereinbefore provided, such determination shall be final and conclusive upon all persons interested therein, and the record shall be transmitted to the proper collector or person acting as such, who shall liquidate the entry accordingly, except in cases where an application shall be filed in the United States court of customs appeals within the time and in the manner provided for in this act.

"SEC. 15. That the general appraisers, or any of them, are hereby authorized to administer oaths, and said general appraisers, the boards of general appraisers, the local appraisers or the collectors, as the case may be, may cite to appear before them, and examine upon oath any owner, importer, agent, consignee, or other person touching any matter or thing which they, or either of them, may deem material respecting any imported merchandise, in ascertaining the dutiable value or classification thereof; and they, or either of them, may require the production of any letters, accounts, or invoices relating to said merchandise, and may require such testimony to be reduced to writing, and when so taken it shall be filed in the office of the collector and preserved for use or reference until the final decision of the collector or said board of appraisers shall be made respecting the valuation or classification of said merchandise, as the case may be.

"SEC. 16. That if any person so cited to appear shall neglect or refuse to attend, or shall decline to answer, or shall refuse to answer in writing any interrogatories, and subscribe his name to his deposition, or to produce such papers when so required by a general appraiser, or a board of general appraisers, or a local appraiser or a collector, he shall be liable to a penalty of $100; and if such person be the owner, importer, or consignee, the appraisement which the general appraiser, or board of general appraisers, or local appraiser or collector, where there is no appraiser, may make of the merchandise shall be final and conclusive; and any person who shall willfully and corruptly swear falsely on an examination before any general appraiser, or board of general appraisers, or local appraiser or collector, shall be deemed guilty of perjury; and if he is the owner, importer, or consignee, the merchandise shall be forfeited.

"SEC. 17. That all decisions of the general appraisers and of the boards of general appraisers respecting values and rates of duty shall be preserved and filed, and shall be open to inspection under proper regulations to be prescribed by the Secretary of the Treasury. All decisions of the general appraisers shall be reported forthwith to the Secretary of the Treasury and to the Board of General Appraisers on duty at the port of New York, and the report to the board shall be accompanied, whenever practicable, by samples of the merchandise in question, and it shall be the duty of the said board, under the direction of the Secretary of the Treasury, to cause an abstract to be made and published of such decisions of the appraisers as they may deem important, and of the decisions of each of the general appraisers and boards of general appraisers, which abstract shall contain a general description of the merchandise in question, and of the value and rate of duty fixed in each case, with reference, whenever practicable, by number or other designation, to samples deposited in the place of samples at New York, and such abstract shall be issued from time to time, at least once in each week, for the information of customs officers and the public.

"SEC. 18. That whenever imported merchandise is subject to an ad valorem rate of duty, or to a duty based upon or regulated in any manner by the value thereof, the duty shall be assessed upon the actual market value or wholesale price thereof, at the time of exportation to the United States, in the principal markets of the country from whence exported; that such actual market value is the price at which such merchandise is freely offered for sale to all purchasers in said markets, and is the price which the manufacturer or owner would have received, and was willing to receive, for such merchandise when sold in the ordinary course of trade in the usual wholesale quantities, including the value of all cartons, cases, crates, boxes, sacks, casks, barrels, hogsheads, bottles, jars, demijohns, carboys, and other containers or coverings, whether holding liquids or solids, which are not otherwise specially subject to duty under any paragraph of the tariff act, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, and if there be used for covering or holding imported merchandise, whether dutiable or free, any unusual article or form designed for use otherwise than in the bona fide transportation of such merchandise to the United States, additional duty shall be levied and collected upon such material or article at the rate to which the same would be subject if separately imported. That the words 'value,' or 'actual market value,' or 'wholesale price,' whenever used in this act, or in any law relating to the appraisement of imported merchandise, shall be construed to be the actual market value or wholesale price of such, or similar merchandise comparable in value therewith, as defined in this act.

"SEC. 19. Any merchandise deposited in any public or private bonded warehouse may be withdrawn for consumption within three years from the date of original importation, on payment of the duties and charges to which it may be subject by law at the time of such withdrawal: *Provided*, That nothing herein shall affect or impair existing provisions of law in regard to the disposal of perishable or explosive articles.

"SEC. 20. That in all suits or informations brought, where any seizure has been made pursuant to any act providing for or regulating the collection of duties on imports or tonnage, if the property is claimed by any person, the burden of proof shall lie upon such claimant: *Provided*, That probable cause is shown for such prosecution, to be judged of by the court.

"SEC. 21. That all fees exacted and oaths administered by officers of the customs, except as provided in this act, under or by virtue of existing laws of the United States, upon the entry of imported goods and the passing thereof through the customs, and also upon all entries of domestic goods, wares, and merchandise for exportation, be, and the same are hereby, abolished; and in case of entry of merchandise for exportation, a declaration, in lieu of an oath, shall be filed, in such form and under such regulations as may be prescribed by the Secretary of the Treasury; and the penalties provided in the sixth section of this act for false statements in such declaration shall be applicable to declarations made under this section: *Provided*, That where such fees, under existing laws, constitute, in whole or in part, the compensation of any officer, such officer shall receive, from and after the passage of this act, a fixed sum for each year equal to the amount which he would have been entitled to receive as fees for such services during said year.

"SEC. 22. That no allowance for damage to goods, wares, and merchandise imported into the United States, including decay, injury, or destruction by rot of fruits or any other merchandise, shall hereafter be made in the estimation and liquidation of duties thereon, except in cases where such goods may have been seized and destroyed under orders issued by any lawfully constituted board of health, but the importer thereof may within ten days after entry abandon to the United States all or any portion of goods, wares, and merchandise included in any invoice and be relieved from the payment of the duties on the portion so abandoned: *Provided*, That the portion so abandoned shall amount to 10 per cent or over of the total value or quantity of the invoice, and the property so abandoned, if of any value, shall be sold by public auction or otherwise disposed of for the account and credit of the United States under such regulations as the Secretary of the Treasury may prescribe. The right of abandonment herein provided for may be exercised whether the thing abandoned has any market value or not.

"SEC. 23. That whenever it shall be shown to the satisfaction of the Secretary of the Treasury that, in any case of unascertained or estimated duties, or payments made upon appeal, more money has been paid to or deposited with a collector of customs than, as has been ascertained by final liquidation thereof, the law required to be paid or deposited, the Secretary of the Treasury shall direct the Treasurer to refund and pay the same out of any money in the Treasury not otherwise appropriated. The necessary moneys therefor are hereby appropriated, and this appropriation shall be deemed a permanent indefinite appropriation; and the Secretary of the Treasury is hereby authorized to correct manifest clerical errors in any entry or liquidation, for or against the United States, at any time within one year of the date of such entry, but not afterwards: *Provided*, That the Secretary of the Treasury shall, in his annual report to Congress, give a detailed statement of the various sums of money refunded under the provisions of this act or of any other act of Congress relating to the revenue, together with copies of the rulings under which repayments were made.

"SEC. 24. That from and after the taking effect of this act no collector or other officer of the customs shall be in any way liable to any owner, importer, consignee, or agent of any merchandise, or any other person, for or on account of any rulings or decisions as to the classification of said merchandise or the duties charged thereon, or the collection of any dues, charges, or duties on or on account of said merchandise, or any other matter or thing as to which said owner, importer, consignee, or agent of such merchandise might, under this act, be entitled to appeal from the decision of said collector or other officer, or from any board of appraisers provided for in this act.

"SEC. 25. That any person who shall give, or offer to give, or promise to give, any money or thing of value, directly or indirectly, to any officer or employee of the United States in consideration of or for any act or omission contrary to law in connection with or pertaining to the importation, appraisement, entry, examination, or inspection of goods, wares, or merchandise, including herein any baggage or of the liquidation of the entry thereof, or shall by threats or demands or promises of any character attempt to improperly influence or control any such officer or employee of the United States as to the performance of his official duties shall, on conviction thereof, be fined not exceeding $2,000, or be imprisoned at hard labor not more than one year, or both, in the discretion of the court; and evidence of such giving, or offering, or promising to give, satisfactory to the court in which such trial is had, shall be regarded as prima facie evidence that such giving or offering or promising was contrary to law, and shall put upon the accused the burden of proving that such act was innocent and not done with an unlawful intention.

"SEC. 26. That any officer or employee of the United States who shall, excepting for lawful duties or fees, solicit, demand, exact, or receive from any person, directly or indirectly, any money or thing of value in connection with or pertaining to the importation, appraisement, entry, examination, or inspection of goods, wares, or merchandise, including herein any baggage or liquidation of the entry thereof, on conviction thereof shall be fined not exceeding $5,000 or be imprisoned at hard labor not more than two years, or both, in the discretion of the court; and evidence of such soliciting, demanding, exacting, or receiving, satisfactory to the court in which such trial is had, shall be regarded as prima facie evidence that such soliciting, demanding, exacting, or receiving was contrary to law, and shall put upon the accused the burden of proving that such act was innocent and not with an unlawful intention.

"SEC. 27. That any baggage or personal effects arriving in the United States in transit to any foreign country may be delivered by the parties having it in charge to the collector of the proper district, to be by him retained, without the payment or exaction of any import duty, or to be forwarded by such collector to the collector of the port of departure and to be delivered to such parties on their departure for their foreign destination, under such rules and regulations as the Secretary of the Treasury may prescribe.

"SEC. 28. That sections 2608, 2838, 2839, 2841, 2843, 2845, 2853, 2854, 2856, 2858, 2860, 2900, 2902, 2905, 2907, 2908, 2909, 2922, 2923, 2924, 2927, 2929, 2930, 2931, 2932, 2943, 2945, 2952, 3011, 3012, 3012½, 3013, of the Revised Statutes of the United States, be, and the same are hereby, repealed, and sections 9, 10, 11, 12, 14, and 16 of an act entitled 'An act to amend the customs-revenue laws and repeal moieties,' approved June 22, 1874, and sections 7, 8, and 9 of the act entitled 'An act to reduce internal-revenue taxation, and for other purposes,' approved March 3, 1883, and all other acts and parts of acts inconsistent with the provisions of this act, are hereby repealed, but the repeal of existing laws or modifications thereof embraced in this act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal or modifications; but all rights and liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modifications had not been made. Any offenses committed, and all penalties or forfeitures or liabilities incurred prior to the passage of this act under any statute embraced in or changed, modified, or repealed by this act may be prosecuted and punished in the same manner and with the same effect as if this act had not been passed. All acts

of limitation, whether applicable to civil causes and proceedings or to the prosecution of offenses or for the recovery of penalties or forfeitures embraced in or modified, changed, or repealed by this act, shall not be affected thereby; and all suits, proceedings, or prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to the passage of this act, may be commenced and prosecuted within the same time and with the same effect as if this act had not been passed: *And provided further*, That nothing in this act shall be construed to repeal the provisions of section 3058 of the Revised Statutes as amended by the act approved February 23, 1887, in respect to the abandonment of merchandise to underwriters or the salvors of property, and the ascertainment of duties thereon.

"SEC. 29. That a United States court of customs appeals is hereby created, and said court shall consist of a presiding judge and four associate judges appointed by the President, by and with the advice and consent of the Senate, each of whom shall receive a salary of $10,000 per annum. It shall be a court of record, with jurisdiction as hereinafter established and limited.

"Said court shall prescribe the form and style of its seal and the form of its writs and other process and procedure and exercise such powers conferred by law as may be conformable and necessary to the exercise of its jurisdiction. It shall have the services of a marshal, with the same duties and powers, under the regulations of the court, as are now provided for the marshal of the Supreme Court of the United States, so far as the same may be applicable, said services to be performed by the United States marshals in and for the districts where sessions of said court may be held, and to this end said marshals shall be the marshals of said court of customs appeals. The court shall appoint a clerk, whose office shall be in the city of New York, and who shall perform and exercise the same duties and powers in regard to all matters within the jurisdiction of said court as are now exercised and performed by the clerk of the Supreme Court of the United States, so far as the same may be applicable. The salary of the clerk shall be $4,000 per annum, which sum shall be in full payment for all service rendered by such clerk, and all fees of any kind whatever, and all costs shall be by him turned into the United States Treasury. Said clerk shall not be appointed by the court or any judge thereof as a commissioner, master, receiver, or referee. The costs and fees in the said court shall be fixed and established by said court in a table of fees to be adopted and approved by the Supreme Court of the United States within three months after the organization of said court: *Provided*, That the costs and fees so fixed shall not, with respect to any item, exceed the costs and fee charged in the Supreme Court of the United States; and the same shall be expended, accounted for, and paid over to the Treasury of the United States. The court shall have power to establish all rules and regulations for the conduct of the business of the court and as may be needful for the uniformity of decisions within its jurisdiction as conferred by law.

"The said United States court of customs appeals shall always be open for the transaction of business, and sessions thereof may be held annually, or oftener, by the said court, in the several judicial circuits, at the following places: In the first circuit, in the city of Boston; in the second circuit, in the city of New York; in the third and fourth circuits, in the cities of Philadelphia and Baltimore; in the fifth circuit, in the cities of New Orleans and Galveston; in the sixth, seventh, and eighth circuits, in the city of Chicago; in the ninth circuit, in the cities of Seattle, Portland, and San Francisco; and in such other places in each of the above circuits as said court may from time to time designate.

"The presiding judge of said court shall be so designated in order of appointment and in the commission issued him by the President, and the associate judges shall have precedence according to the date of their commissions. Any three of the members of said court shall constitute a quorum.

"The said court shall organize and open for the transaction of business in the city of New York within ninety days after the judges, or a majority of them, shall have qualified.

"After the organization of said court no appeal shall hereafter be taken or allowed from any Board of United States General Appraisers to any other court, and no appellate jurisdiction shall hereafter be exercised or allowed by any other courts in cases decided by said Board of United States General Appraisers; but all appeals allowed by law from such Board of General Appraisers shall be subject to review only in the United States court of customs appeals hereby established, according to the provisions of this act.

"The court of customs appeals established by this act shall exercise exclusive appellate jurisdiction to review by appeal, as provided by this act, final decisions by a Board of General Appraisers in all cases as to the construction of the law and the facts respecting the classification of merchandise and the rate of duty imposed thereon under such classification, and the fees and charges connected therewith, and all appealable questions as to the jurisdiction of said board, and all appealable questions as to the laws and regulations governing the collection of the customs revenues; and the judgment or decrees of said court of customs appeals shall be final in all such cases.

"Any judge who, in pursuance of the provisions of this act, shall attend a session of the court of customs appeals held at any place other than the city of New York shall be paid, upon his written and itemized certificate, by the marshal of the district in which the court shall be held, his actual and necessary expenses incurred for travel and attendance, and the actual and necessary expenses of one stenographic clerk who may accompany him, and such payments shall be allowed the marshal in the statement of his accounts with the United States.

"The marshals of the several districts in which said court of customs appeals may be held shall, under the direction of the Attorney-General of the United States and with his approval, provide such rooms in the public buildings of the United States as may be necessary for said court: *Provided, however*, That in case proper rooms can not be provided in such buildings, then the said marshals, with the approval of the Attorney-General of the United States, may, from time to time, lease such rooms as may be necessary for said court. The bailiffs and messengers of said court shall be allowed the same compensation for their respective services as are allowed for similar services in the existing circuit courts; and in no case shall said marshals secure other rooms than those regularly occupied by existing circuit courts of appeals, circuit courts, or district courts, or other public officers, except where such can not, by reason of actual occupancy or use, be occupied or used by said court of customs appeals.

"If the importer, owner, consignee, or agent of any imported merchandise, or the collector or Secretary of the Treasury, shall be dissatisfied with the decision of the Board of General Appraisers as to the construction of the law and the facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, or with any other appealable decision of said board, they, or either of them, may, within sixty days next after the entry of such decree or judgment, and not afterwards, apply to the United States court of customs appeals for a review of the questions of law and fact involved in such decision: *Provided*, That in Alaska and in the insular and other outside possessions of the United States ninety days shall be allowed for making such application to the United States court of customs appeals. Such application shall be made by filing in the office of the clerk of said court a concise statement of errors of law and fact complained of, and a copy of said statement shall be served on the collector, or on the importer, owner, consignee, or agent, as the case may be. Thereupon the court shall immediately order the Board of General Appraisers to transmit to said court the record and evidence taken by them, together with the certified statement of the facts involved in the case and their decision thereon; and all the evidence taken by and before said board shall be competent evidence before said court of customs appeals. The decision of said court of customs appeals shall be final, and such cause shall be remanded to said Board of General Appraisers for further proceedings to be taken in pursuance of such determination.

"Immediately upon the organization of the United States court of customs appeals all cases within the jurisdiction of that court now pending and not submitted for decision in any of the United States circuit courts of appeals, United States circuit, territorial or district courts, shall, with the record and samples therein, be certified by said courts to said United States court of customs appeals for further proceedings in accordance herewith: *Provided*, That where orders for the taking of further testimony before a referee have been made in any of such cases, the taking of such testimony shall be completed before such certification.

"That in case of a vacancy or the temporary inability or disqualification for any reason of one or two judges of said court of customs appeals, the President of the United States may, upon the request of the presiding judge of said court, designate any qualified United States circuit or district judge or judges to act in his or their place, and such United States judge or judges shall be duly qualified to so act.

"Said United States court of customs appeals shall have power to review any decision or matter within its jurisdiction and may affirm, modify, or reverse the same and remand the case with such orders as may seem to it proper in the premises, which shall be executed accordingly.

"Immediately upon receipt of any record transmitted to said court for determination the clerk thereof shall place the same upon the calendar for hearing and submission; and such calendar shall be called and all cases thereupon submitted, except for good cause shown, at least once every sixty days.

"In addition to the clerk of said court the court may appoint an assistant clerk at a salary of $2,000 per annum, three stenographic clerks at a salary of $2,400 per annum each, and one stenographic reporter at a salary of $2,500 per annum, and a messenger at a salary of $900 per annum, all payable in equal monthly installments, and all of whom, including the clerk, shall hold office during the pleasure of and perform such duties as are assigned them by the court. Said reporter shall prepare and transmit to the Secretary of the Treasury once a week in time for publication in the Treasury Decisions copies of all decisions rendered to that date by said court, and prepare and transmit, under the direction of said court, at least once a year, reports of said decisions rendered to that date, constituting a volume, which shall be printed by the Treasury Department in such numbers and distributed or sold in such manner as the Secretary of the Treasury shall direct. The United States marshal for the southern district of New York is hereby authorized to purchase, under the direction of the presiding judge, such books, periodicals, and stationery as may be necessary for the use of said court, and such expenditures shall be allowed the marshal in the statement of his accounts with the United States.

"SEC. 30. That there shall be appointed by the President, by and with the advice and consent of the Senate, an Assistant Attorney-General, who shall exercise the functions of his office under the supervision and control of the Attorney-General of the United States, and who shall be paid a salary of $10,000 per annum; and there shall also be appointed by the Attorney-General of the United States a Deputy Assistant Attorney-General, who shall be paid a salary of $7,500 per annum, and four attorneys, who shall be paid salaries, one of $6,000, and the other three of $5,000 per annum each. Said attorneys shall act under the immediate direction of said Assistant Attorney-General, or, in case of his absence or a vacancy in his office, under the direction of said Deputy Assistant Attorney-General, and said Assistant Attorney-General, Deputy Assistant Attorney-General, and attorneys shall have charge of the interests of the Government in all matters of reappraisement and classification of imported goods and of all litigation incident thereto, and shall represent the Government in all the courts wherein the interests of the Government require such representation."

TAXES ON INCOMES.

The VICE-PRESIDENT. The Senator from Kansas desires to offer an amendment to the so-called "Brown joint resolution." If there be no objection, the joint resolution will be taken up and the amendment will be now received.

The Senate, as in Committee of the Whole, proceeded to consider the joint resolution (S. J. R. 40) proposing an amendment to the Constitution of the United States.

Mr. BRISTOW. I desire to add to the joint resolution what I send to the desk.

The VICE-PRESIDENT. The Secretary will read the proposed amendment.

The SECRETARY. It is proposed to add to Senate joint resolution 40:

That section 3 of Article I be so amended that the same shall be as follows:

"ARTICLE I.

"SEC. 3. That the Senate of the United States shall be composed of two Senators from each State, who shall be chosen by a direct vote of the people of the several States, for six years; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the state legislatures; and each Senator shall have one vote."

Mr. ALDRICH. Mr. President, I shall at the proper time raise the question that that amendment is not in order. The unanimous-consent agreement relates to an amendment to the Constitution with reference to the income tax and no consent has been given for the consideration of such a proposition. If we can undertake to change the Constitution with reference to the election of Senators, we can change it in every possible respect as to the right of the people to have a regulation of the franchise in all the States and Territories. I object very strenuously to any such amendment, and at the proper time I shall raise the question of order against it.

Mr. BRISTOW. I should like to know what the question of order would be.

Mr. ALDRICH. It will be that we have by unanimous consent agreed to vote at 1 o'clock upon a constitutional amendment providing for an income tax, and that nothing else is in order.

Mr. BRISTOW. But this is an amendment to the joint resolution proposing that amendment.

Mr. ALDRICH. It must be an amendment which is germane to the proposition and not an amendment to change the whole Constitution of the United States.

Mr. BRISTOW. This is not an amendment to change the whole Constitution of the United States. It is simply an addition to the present amendment which seeks to change the Constitution, and it adds another paragraph only.

I desire to say that the election of Senators by the people has been largely discussed, and, in my judgment, there is a very wide sentiment throughout the country in favor of it. Originally, it is known to everyone, it was the purpose of the framers of the Constitution that the President should be elected by an electoral college selected by the people. The membership of such college, it was supposed, would be superior in wisdom and judgment to the average citizen, so that we would have a wiser selection of the President than if it depended upon popular elections. But the evolution of our political affairs has completely changed this system of the election of President. The President is to-day nominated and elected by a direct vote in fact, although in theory the electoral college elects, but only in theory.

The Senate was to be chosen by the legislatures of the various States in joint session, because it was believed that the members of the legislature would be better equipped to select men to fill the office of Senator than would the average citizenship. But in many of the States this part of the Constitution is being done away with by the direct primary, and in some of them by requiring under state laws the Senators to be nominated and voted for at the general election.

There is no reason why in this age of the world, in this period of our progress, the people should not have an opportunity to select the men who will represent them in this body. If there ever was any occasion for the legislature to elect Senators, that occasion has long since passed, because of the wide dissemination of popular knowledge. The American people in the various States are as well qualified to select their Senators as the members of their legislatures representing them in their legislative bodies.

Then the legislatures are elected now to transact state business, and the election of Senators is sometimes an incidental matter. There is not any reason why the people of every State should not have the right and the opportunity to vote directly for the men who are to represent them in this body. I can not understand why any Senator should object to giving the people of his State the right to select the men who will represent them here. My judgment is that any man who is not willing for the people whom he represents to express a direct choice as to whether he shall, or shall not, continue to represent them here, is either afraid that he is not the choice of the people whom he represents, or it is a confession that he does not represent them as they want him to represent them.

So I shall insist, first, that this amendment is in order and, second, that it ought to be passed.

Mr. ALDRICH. Mr. President, I shall raise another question on the amendment, and I give notice of it now, in order that there may be no misapprehension about it. It is in violation of the unanimous-consent agreement that no business shall be done other than tariff business.

Mr. STONE. Mr. President, I desire to consume about ten minutes or so of the valuable time of the Senate to say a few words respecting the resolution proposing an amendment to the Constitution, authorizing the imposition of an income tax. I wish to read a declaration contained in the Democratic national platform which was promulgated at Denver in 1908. It is as follows:

> We favor an income tax as part of our revenue system, and we urge the submission of a constitutional amendment specifically authorizing Congress to levy and collect a tax upon individual and corporate incomes, to the end that wealth may bear its proportionate share of the burdens of the Federal Government.

That declaration, clear and explicit, is alone sufficient to determine my attitude with regard to the resolution to be voted upon to-day. I am gratified to note this one more example, in addition to those I have heretofore pointed out, of Republicans following in the wake of Democratic leadership and along lines blazed by our Democratic pioneers. The President has taken his stand on the Denver platform, and a Republican Senator has culled one of its declarations and formulated it into the legislative proposition now before the Senate. I am happy to note these repeated evidences of enlightened progressiveness on the part of our Republican brethren. I hope, however, that when the Senator from Nebraska [Mr. BROWN], whose resolution has been selected by the Finance Committee as the basis of this proposition, thereby giving to that Senator the distinction of authorship, goes before the people and the legislature of his State to urge the ratification of the proposed amendment, he will not fail to inform them that he got his idea from a Democratic platform and from the utterances of Mr. Bryan, the leading Democrat and the most distinguished citizen of his State. I am entirely willing to have our friends on the other side appropriate the good things of Democracy, but I think they ought to have candor and fairness enough to accord proper credit to the sources of their inspiration, otherwise it would be an act of political piracy.

Mr. BROWN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Missouri yield to the Senator from Nebraska?

Mr. STONE. For a question or an explanation.

Mr. BROWN. Does the Senator from Missouri mean to be understood as being of the opinion that the source, as he calls it—the Democratic source—of this joint resolution is anything against it?

Mr. STONE. Oh, no; I was congratulating the Senator and his party colleagues that they had at last become so favorably impressed by these Democratic influences.

Mr. BROWN. Is the Senator complaining because of what he calls "an appropriation of this idea?"

Mr. STONE. I am not complaining; I am complimenting and congratulating.

Mr. BROWN. Does not the Senator understand that if there is ever anything good found in the Democratic platform and the people are to get the benefit of it, somebody has to appropriate it?

Mr. STONE. I am perfectly willing that you should appropriate it, only I have been urging, as a matter of fairness, that when you go before the people of Nebraska you should not neglect to inform them that you had caught this idea from the Democratic platform. No doubt that would help you to carry it through.

Mr. President, fear has been expressed that more than one-fourth of the States will withhold their consent to the amendment and reject it, and then it is apprehended that an argument will be based on that circumstance to induce the Supreme Court to adhere to the doctrine announced in the Pollock case if ever the constitutionality of an income tax is again before that tribunal. That an effort will be made—a powerful and well-organized effort—to defeat the amendment can be accepted from the start as certain. What the result of that struggle will be I am not wise enough to forecast. I believe there is an overwhelming popular sentiment in favor of the Government, operating through its appointed agencies, being clothed with the power to impose a general income tax. There are many thousands who do not believe that that power should be exercised, or that such a tax should be authorized, except in times of stress and grave emergency; but thousands who thus believe, being patriotic citizens, will support the proposition to clothe the Government with the power. Mr. President, I believe in the policy of an income tax, but I wish here and now to say that I have never regarded with great favor the proposition to exempt incomes below a given sum from the operation of the law. That notion of exempting the smaller incomes from the tax does not appeal to me. Although I have been ready at all times to support what is known as the "Bailey-Cummins amendment," I would prefer a graduated income tax, levying the smallest per cent upon the smallest class of incomes, and then increasing the rate along some well-considered scale of progression. I would prefer, when incomes are being taxed, that every man who has an income, and certainly a net income, should contribute something to the support of the Government; however, it is hardly worth while to enter upon a discussion of that question now, and I will not.

Mr. President, I can not persuade myself that more than one-fourth of our American States will reject this proposed

amendment to the Constitution. But if that should happen it still could not be said that the people, speaking in the larger sense, were opposed to the proposition. If 12 States should by bare majorities in each reject the proposition, and 33 States should agree to it, as they would by large majorities, it would still be manifest that the great body of the people favored the amendment. And then, again, if it be true that the Constitution in its present form is broad enough to authorize the imposition of a general income tax, the failure to secure an adoption of the proposed amendment would not change the constitutional status as it exists to-day. If the Supreme Court should be called upon to review the Pollock case, and should be inclined to return to its earlier and, I think, sounder rulings, namely, that an income tax was within the Constitution, I can see no good reason why the court would hesitate to adopt that course even if this amendment should fail of ratification. If the court should go outside the record to consider extraneous matter, or should listen to an argument predicated on the alleged fact that the people had rejected the amendment, every justice would know that on the contrary the great mass of the people favored the proposition, and every man would know what influences operated, and how they operated, to defeat the proposition. It seems to me this is an opportune time to launch this amendment. If the President is sincere, and I have no doubt that he is, and if such men as the junior Senator from New York [Mr. ROOT] are sincere, and I have no doubt that they are—with all these powerful Republican influences favoring the amendment, and with the Democratic party solidly behind it, it seems to me that our united efforts to write this amendment into the fundamental law ought to succeed. At all events, speaking for myself, I am more than willing to put the issue to the test.

Mr. President, before closing I wish to say a few words upon another subject not wholly dissociated from the question immediately before us. In 1896, the Democratic national convention declared that the deficit in our revenues at that time was due to the decision of the Supreme Court setting aside the income-tax law of 1894; and the convention further declared that that decision overruled previous decisions of the court, and thus announced a new judicial doctrine on the subject of income taxation; and then the convention declared that it was the duty of Congress to use all the constitutional power which remained after that decision, or which might come from its reversal by the court as it might be in future constituted, to the end that the burdens of taxation might be equally and impartially laid, and so forth. During the campaign of that year the Democratic party and the Democratic candidates were furiously and wantonly assailed for attacking the Supreme Court, and for threatening to "pack" the court with subservient judges so as to secure a reversal of the decision referred to. I have recently read some of the wild ravings of Republican orators and editors during that memorable campaign. The Republican candidate, Mr. McKinley, and ex-President Harrison, and Senators and Representatives, and great metropolitan journals joined in this hue and cry. There was never a falser or more vicious charge made against a party declaration or a party purpose. The convention did protest, and on a basis of absolute truth had a right to protest, that the decision of the court was in contravention of repeated previous utterances of that tribunal; and the convention did insist, as with the most perfect propriety it had a right to insist, that Congress should continue to exercise all the power it had remaining after that decision so long as it stood as the judgment of the court, and until it should be reversed, if ever it should be reversed, when the personal composition of the court had changed. There was no threat or desire or thought upon the part of any Democrat to "pack" the court, but we had sense enough to know that the decision would not in all human probability be changed as long as the personnel of the court remained as it then was; and we had sense enough to know that in the natural course of things the elderly men who sat upon the bench would pass away and that new men would succeed them——

Mr. BEVERIDGE. Will the Senator permit a question?

Mr. STONE. I would rather the Senator would wait.

Mr. BEVERIDGE. All right.

Mr. STONE. And we had sense enough to know that the decision complained of not only did not have the popular approval, but did not have the approval of the great majority of the lawyers constituting the American bar. In view of these things, the convention had a right to declare, without being accused of discourtesy to the court or of making an assault upon it, that the questions involved and passed upon should be again submitted for judicial determination. Mr. President, we have passed far beyond that period, I know, and perhaps it does no good to speak of it now. Still, I can not let this opportune occasion go by without impressing as far as I can upon public attention the malevolent and mendacious character of the politics practiced at that time by our overvirtuous Republican friends. Since then Mr. Roosevelt, a Republican President, has spoken with blunt and almost vulgar harshness of decisions rendered by some of our high federal courts, and yet he remained for years the very idol of the great mass of Republicans. Since then we have been told by the present Chief Magistrate, in substance at least, that with the changed personnel of the court the income-tax decision against which the people have been protesting ever since it was made might not be adhered to if the question should be again submitted. Why, Mr. President, that was the very thing, said in 1896, that roused Republican cohorts from far and near into assaulting the Democratic party as a dangerous, if not treasonable, organization. And, sir, during this very debate I have heard great Republican Senators, standing here on this floor, urging the necessity of resubmitting this question to the court, and urging it for the very reasons assigned in the Democratic platform of 1896. I have heard them say that all talk about the proposition to resubmit the question through legislative action as being indelicate was a "morbid, ill-founded sentiment." Ah, Mr. President, our Republican friends, at least, all of them, are not now what they were. A wonderful change has come over the spirit of their dreams, or the dreams of some of them, since the sound and fury of that mighty struggle of near thirteen years ago have died away. What they denounced as almost treasonable then they now applaud as virtuous and patriotic. And this is another instance demonstrating the ultimate wisdom and justice of Democratic policy; and to impress that fact, now so well illustrated, is about the only excuse I have for adverting to a subject which can not be wholly pleasant to everybody.

Mr. President, that is all I care to say regarding the joint resolution proposed by the Senator from Nebraska.

Just a word now relating to the amendment, so called, offered this morning by the Senator from Kansas [Mr. BRISTOW]. I would cheerfully vote for both propositions, for both are well-known Democratic propositions, but it seems to me that it would not be wise policy to couple the two, even if permissible under the rules of the Senate. Both are substantive, distinct, and wholly different propositions relating to wholly different subjects. If they were combined into one single proposition and we should be called to vote upon them in that form, and without division, I fear, while trying to accomplish two things, we would endanger both. I have no doubt there are Senators and Members of the House who might and would vote against the double proposition, being favorable to one proposition and against the other; and for the same reason it might subject the whole scheme to failure if it should be submitted in that form to the legislatures of the States. I think it is in every way far better to deal with the two things separately. If the Senator from Kansas desires to submit a separate amendment for the popular election of Senators, I will join him in supporting it. I would be glad to have the amendment suggested by the Senator from Kansas added to the pending bill, if it can be done under the rules of the Senate, although I doubt if it can be done. The proposition now before the Senate is not offered as an amendment to the tariff bill, but as a distinct and separate proposition. I would be glad to have the amendment proposed by the Senator from Kansas brought to a vote in the Senate and the House, but I do not think it would be wise to combine the two and thus add to the danger and difficulty of passing either. Trying to do too many things, even good things, at one time too often results in doing nothing.

THE TARIFF.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes.

The VICE-PRESIDENT. The Senator from Rhode Island, as the Chair understands, asks that the amendment which he presented be considered section by section.

Mr. ALDRICH. I am not particular about it. I am quite willing to have the amendment agreed to as a whole; but there are some amendments, I think, which Senators would like to offer to the court provisions.

Mr. HEYBURN. Let me offer this amendment——

The VICE-PRESIDENT. Does the Senator from Rhode Island desire to have the sections read?

Mr. ALDRICH. No; the sections have already been read. Of course, the amendment is to the amendment.

The VICE-PRESIDENT. Does the Senator from Rhode Island desire the question put on each section?

Mr. ALDRICH. I am not suggesting that. Unless other Senators desire that, I am quite willing to have it understood that the amendments shall be treated as one amendment, and that amendments to the amendment may be offered from time to time.

Mr. JONES. Mr. President——

Mr. BEVERIDGE. May I ask the Senator from Rhode Island——

The VICE-PRESIDENT. The Senator from Washington first addressed the Chair, and is recognized.

Mr. JONES. Mr. President, I am receiving a great many letters from constituents of mine in regard to the income-tax proposition and also with reference to the corporation-tax measure. These letters come from ordinary, plain citizens, and not from lawyers or constitutional interpreters. I desire to have one letter read, which is a sample of the many letters that I am getting from these people, and shows their view with reference to the proposed legislation.

The VICE-PRESIDENT. Is there objection to the reading of the letter asked for by the Senator from Washington? The Chair hears none. The Secretary will read the letter, as requested.

The Secretary read as follows:

SPOKANE, WASH., *June 29, 1909.*

Hon. WESLEY L. JONES,
United States Senate, Washington, D. C.

DEAR SIR: We have had considerable discussion in our city during the past few days regarding the question of income tax as presented by the Bailey bill, and the question of a tax upon corporations, designated as the "Taft" or "administration" bill. All that I have heard express themselves are in favor of the administration bill, feeling that there is a possibility of, first, illegality of the Bailey bill, and we think that it is better to have temporary relief at this time and formulate an income tax that will serve the purposes and best interests of all the people, which we are in doubt of regarding the present bill.

The Spokane Chamber of Commerce to-day indorsed the administration bill in words as follows:

"*Resolved*, That the Chamber of Commerce of Spokane indorse the income-tax policy as outlined by President Taft, and urge our Senators and Representatives to support the same."

The bankers' association indorsed a similar resolution. The merchants' association and lumbermen have likewise indorsed it. I believe the citizens of this part of the State would much prefer the Taft bill at this time.

I give this information as a citizen and taxpayer of the State of Washington, trusting that in your wisdom you will reach a conclusion that will give us the fullest and best law.

Very truly, D. T. HAM.

Mr. HEYBURN. Mr. President, after a conference with the chairman of the Committee on Finance [Mr. ALDRICH], I desire, in the interest of uniformity of the amendment which we adopted on Saturday, on page 2, line 23, after the word "then," to strike out "upon" and to insert "ninety days after the." I have submitted it to the chairman of the Committee on Finance, though I do not see him here at this moment. It is in uniformity with the other amendments, and there is no objection to it. It will be necessary to reconsider the vote by which we adopted the amendment in order to enable me to submit this amendment. I ask unanimous consent for its reconsideration for the purpose of submitting the amendment which I have just proposed.

The VICE-PRESIDENT. The Senator from Idaho asks unanimous consent to reconsider the vote by which the paragraph on page 2, line 23, of the amendment was agreed to on Saturday, for the purpose of offering an amendment at that point. Is there objection? The Chair hears none. The Senator now offers an amendment, which the Secretary will state.

The SECRETARY. On page 2, line 23, after the word "then," it is proposed to strike out "upon" and insert "ninety days after the."

Mr. BAILEY. What is the object of that amendment, Mr. President?

Mr. HEYBURN. It is a corresponding amendment to the one agreed to on Saturday. It occurs twice in the amendment.

Mr. STONE. I should like to hear the amendment. I did not catch it. The amendment made on Saturday to which the Senator from Idaho [Mr. HEYBURN] now proposes an amendment provided for a notice of ninety days.

Mr. ALDRICH. In case of the reimposition of the maximum duties.

Mr. HEYBURN. Notice of any change except the statutory change.

Mr. ALDRICH. Of any change except the statutory change. If that amendment is disposed of, Mr. President——

The VICE-PRESIDENT. The question is on the amendment proposed by the Senator from Idaho [Mr. HEYBURN] to the amendment.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. ALDRICH. Mr. President, the committee intend to occupy——

Mr. BAILEY. I thought the constitutional amendment joint resolution was before the Senate.

Mr. ALDRICH. No; that is to be voted on at 1 o'clock.

Mr. BAILEY. I want to submit an amendment to that.

The VICE-PRESIDENT. At present the pending amendment is the amendment offered by the Senator from Rhode Island [Mr. ALDRICH].

Mr. BAILEY. I will not interfere with that. I will wait until the Senator gets through.

Mr. KEAN. Let us finish this.

Mr. ALDRICH. If the Senator from Texas wants to give notice now of an amendment, I will yield for that purpose.

TAXES ON INCOMES.

The Senate, as in Committee of the Whole, resumed the consideration of the joint resolution (S. J. R. 40) proposing an amendment to the Constitution of the United States.

Mr. BAILEY. I want to offer an amendment, and I will occupy only two or three minutes.

I move to strike out the word "legislatures," in line 5, and to substitute the word "conventions;" and in line 9, after the word "incomes," I move to add the words "and may grade the same."

Mr. President, of course the Senate will at once understand that the purpose of the first amendment is to submit the ratification of this proposed amendment to conventions called in each State for that purpose, rather than to the legislatures. I perfectly understand that this would involve some additional cost; but I do not think the question of cost should weigh seriously in a matter of this kind. Legislatures are elected with reference to many questions. Legislatures may be chosen upon local issues. The members may change their opinions, as Members of the Senate have done upon this very question, between the time they are chosen to the legislature and the time when they are required to vote.

A very grave situation now presents itself to the Senate and to the country. If this amendment is submitted and defeated, all hope and all possibility of an income tax disappears forever from the consumers of this Republic. With the Pollock case standing unreversed, with the President of the United States sending a message to Congress, in which he asserts that the court can not be reasonably expected to recede from that decision; with both Houses of Congress responding to the President's suggestion, and submitting a constitutional amendment to the various States, if that amendment is rejected, we shall never live long enough to see a Supreme Court reverse the Pollock case. They will say, and they will have reason to say, that with the Pollock case the unchallenged law—and so far as the court is concerned it stands unchallenged—with the executive department recognizing it as the law, and recommending that the effect of it shall be obviated by a constitutional amendment; with the two Houses of Congress acting upon that theory, if the amendment to the Constitution, submitted under those circumstances, fails to receive the approval of 12 States in this Union, that is the end of an income tax.

Believing that to be true, I vote for this amendment, under any circumstances, with reluctance, because I do not think it necessary, and I know the submission of it is fraught with extreme danger; but I think the danger of its rejection will be greatly diminished if its ratification is submitted to conventions chosen for the sole and only purpose of passing on it. For that reason I offer this amendment, committing its consideration to conventions, instead of to the legislatures.

The second amendment, Mr. President, gives distinct and specific authority to graduate an income tax, and I think that necessary only as a matter of abundant caution. I would not, perhaps, have thought it necessary at all, except for the statement of Judge Brewer, in the case of Knowlton *v.* Moore, where he dissents from the opinion of the court sustaining the validity of the inheritance-tax law upon the ground that Congress had no power to grade it. Plainly, if Congress is without power under the Constitution as it now stands to grade an inheritance tax, it would be without power under this amendment to grade an income tax; and if we are to put the people of the United States to the trouble and expense of adopting a constitutional amendment authorizing Congress to do what, in my judgment, it now possesses ample power to do, let us make a complete work of it, and let us not find it necessary hereafter either to exercise the power circumscribed within limits which the people would not adopt or find our law held invalid.

I shall ask for a roll call on both of these amendments, unless some better reason can be advanced against their adoption than has occurred to me up to this time.

Mr. McLAURIN. Mr. President, I concur in the wisdom of what was said by the Senator from Texas [Mr. BAILEY] with reference to the necessity for the amendment of this joint resolution; but I think there is a better amendment than the one he proposes to offer, or, at least, a better amendment than the one which amends line 9.

The mischief in reference to an income tax in every discussion of it before the court has grown out of six words, three of them in clause 3 of section 2 of Article I of the Constitution, and three of them in clause 2 of section 9 of Article I of the Constitution. In the first place it says:

Representatives and direct taxes shall be apportioned among the several States—

The words "and direct taxes" in that instance, and in the next—

No capitation or other direct tax shall be laid.

The words "or other direct" are the words that make the mischief in this clause 4 of section 9. With these six words stricken out of the Constitution in the places where they occur, as I have indicated, there could be no trouble about the levying and collecting of an income tax.

I have heretofore indicated my views in reference to the meaning of the three words "or other direct," and I am not going to elaborate them now. I think the word "direct" there must be construed with reference to the word "capitation." A capitation tax is a tax that is levied directly upon the individual without reference to property. It is what is called in the States generally a "poll tax." When you speak of a "capitation tax" as a direct tax and then speak of "other direct taxes," the word "direct" in this connection must be construed ejusdem generis with reference to the word "capitation"—a capitation tax; that is, a direct tax which operates upon the individual himself, without reference to any property at all—and the words "or other direct tax," of course, always, by all rules of construction, must be construed to mean a tax of the same kind. other direct taxes, that operate upon the individual without reference to any property at all. Out of that confusion has grown all the trouble that has arisen in reference to the question of an income tax.

I think there has been too much learning, probably, on this matter. There has possibly been too much research into what has been said by this man or that man in the Constitutional Convention. You must construe the provision with reference to the language used, for no provision in the Constitution and no provision of a legislative enactment or congressional enactment is to be determined by what one man or another man may say in reference to it.

That is illustrated especially here by the action of Senators on the amendment which is going to be voted upon at 1 o'clock to-day. There are many Senators who believe that it is not necessary to have any amendment to the Constitution. The Senator from Texas made a very able, a very learned, and a very eloquent argument to show that an income tax is within the limits of the Constitution as it is now in existence. Other Senators have done the same thing. I only refer to the argument of the Senator from Texas because it was, if my memory is not at fault, the first one that was made and not to make any invidious distinctions, for I think all the arguments that have been made on this view of the Constitution have been very able and very clear. Nevertheless, the Senators who have made these elaborate arguments and who believe that it is not necessary to amend the Constitution in order to justify Congress in enacting an income-tax law are going to vote for the resolution of the Senator from Nebraska, or a substitute therefor, for an amendment to the Constitution.

I have digressed from what I was going to say. I want to say that if the amendment which I offer should be adopted—and I do not much expect that a majority of the Senate are going to adopt it, but I think every Democrat ought to vote for it—if it shall be adopted, will eliminate from the Constitution every cause of contention over the question of the authority of Congress to levy an income tax, except as to the power of Congress to grade an income tax.

This is the amendment:

Amend the joint resolution by striking out all after line 7 and inserting the following, to wit: "The words 'and direct taxes,' in clause 3, section 2, Article I, and the words 'or other direct,' in clause 4, section 9, Article I, of the Constitution of the United States are hereby stricken out."

That will prevent any mischief hereafter. But let me call your attention to some mischief that may arise over this proposal by the Senator from Nebraska; and I should like to have the attention of the Senator from Nebraska to this. The joint resolution provides that the proposed amendment to the Constitution shall read as follows:

The Congress shall have power to lay and collect direct taxes on incomes without apportionment among the several States according to population.

That is what the Senator from Nebraska proposes to insert in the Constitution as the sixteenth amendment. There is going to be some contention that will go before the Supreme Court as to the provision, because the men who are wealthy, the men who have large incomes do not intend to pay any proportionate part of the expenses of this Government if they can get out of it. They expect that the Government of the United States will protect all their property and protect all of their income, but they expect the expenses of the administration of the Government for the protection of their incomes and of their property shall be paid by the poorer classes of the country, shall be paid by the men in humble circumstances and with modest means. That has been the rule heretofore, and they expect it to continue.

Here is the question they are going to raise at once: They are going to say that when you read the proposed constitutional amendment according to its correct interpretation it means "without apportionment among the several States according to population;" but they are going to say that it does not say "without apportionment among the several States according to anything else." You have specified population, but it may be required; they might contend that the tax should be apportioned upon some other basis than that of population.

Mr. BROWN. Mr. President——

The PRESIDING OFFICER (Mr. KEAN in the chair). Does the Senator from Mississippi yield to the Senator from Nebraska?

Mr. McLAURIN. With great pleasure.

Mr. BROWN. There is no other apportionment known to the Constitution except that according to the census or enumeration; and of course the proposed amendment would be construed together with the other provisions of the Constitution. The language used in the joint resolution is taken from the language of other sections of the Constitution, so that there can be no confusion or misunderstanding at all about the joint resolution.

Mr. McLAURIN. I know there is no other apportionment except in the instance to which I have referred; but it may be contended by those who desire to be exempted from the payment of their proportionate share of the taxes necessary to defray the expenses of the Government that there is an apportionment here provided for. It will be contended by those people that there is an apportionment here, and that the naming of one kind is the exclusion of all other kinds. There is a rule of construction that is not only familiar to all lawyers, but it is a rule that commends itself to the judgment of any man, whether he be a lawyer or not, as soon as it is presented to his mind, and that is that the naming of one is the exclusion of all others. When you name one kind of apportionment and provide that it shall not be required to be made, you exclude, then, all other apportionments; and it may be contended of any other apportionment except that which is named here. That is my idea about the mischief that is going to arise.

Then there is another thing that they may contend for, and that is that Congress has recognized the income tax as a direct tax. That is the conclusion that they will draw from the amendment that is proposed by the Senator from Nebraska. I do not think it is a direct tax. I shall vote for the amendment; and it is my intention to vote for the amendment, even though my amendment shall not be adopted; but it does not, in my judgment, meet the requirements of the case so as to put beyond all controversy the question before the Supreme Court of the United States on the constitutionality of the income tax and as to the meaning of the amendment. I think that it ought to be made perfectly clear. I am going to vote for it because I am in favor of anything that looks to the collection of an income tax. I think it is fair and just that there should be an income tax to compel those of wealth, who have great incomes, to pay some part of the expenses of the Government. I favor it not only because it is just, but because the immensely wealthy then will be interested in an economical administration of the Government instead of extravagance, in which they are not interested now, because they are not compelled to pay for any of the extravagance that is indulged in by the Government.

There are a great many other things, Mr. President, that I should like to say on this matter, but I am not going to take up the time of the Senate now to say them. I will ask that the amendment to which I have referred may be read at the Secretary's desk, to give notice of the amendment that I intend to

offer before there shall be a conclusion of the voting on the resolution offered by the Senator from Nebraska.

The VICE-PRESIDENT. The Secretary will state the amendment.

The SECRETARY. Amend the joint resolution by striking out all after line 7 and inserting the following:

The words "and direct taxes," in clause 3, section 2, Article I, and the words "or other direct," in clause 4, section 9, Article I of the Constitution of the United States are hereby stricken out.

Mr. BACON. I should like to know, if the Senator has it before him, exactly how the Constitution will read with those words stricken out?

Mr. McLAURIN. Clause 3, section 2, Article I of the Constitution would read in this way:

Representatives shall be apportioned among the several States which may be included—

And so forth; thus leaving out the words "and direct taxes."

Clause 4, section 9, Article I would read as follows:

No capitation tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken—

Thus leaving out the words "or other direct." There can be no doubt about what a capitation tax is.

Mr. BORAH. Mr. President, I desire to indorse the amendment suggested by the Senator from Texas [Mr. BAILEY] providing for the submission of this amendment to the Constitution to state conventions rather than to state legislatures. I believe it a wise policy for the reason that then it will be an issue before the people, freed entirely of what might be controlling local questions and what might be conditions which would prevent a fair and unprejudiced presentation of the matter upon its merits.

I do not think the mere fact that it may lead to some extra expense ought to be considered in a matter of this importance, for, as I said the other day, if it should transpire that the amendment should not be adopted, the matter would be settled practically for all time. I do not very well see how we could go back to the Supreme Court, after having taken the step that we are about to take here, and ask for a reconsideration of the matter before that body. If 12 States of the Union, by reason of conditions which might prevail in the legislatures which would not give an opportunity to present the matter upon its merits alone, should decide against the ratification of the amendment, the matter would be practically put at rest. It would not be likely to be submitted again within the next twenty-five years, and there would be no greater chance for its adoption when submitted.

I wish to say, therefore, that I shall vote for the amendment suggested by the Senator from Texas [Mr. BAILEY], and I should like very much to see it accepted by those who are in favor of the amendment. It is subject to no possible objection, it seems to me, except possibly that of expense, and it certainly very greatly enhances the chance of success.

Mr. CLAPP. Will the Senator pardon me?

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Minnesota?

Mr. BORAH. I do.

Mr. CLAPP. I will say to the Senator from Idaho that it has occurred to me that if there should be any disinclination to act on the matter by the state legislatures, the fact that we had provided a means which did entail additional expense might be something behind which men might shield themselves. For that reason, while I am heartily in favor of the amendment, I am not so clear it would be well to put it where a matter of expense could be urged as a reason for not acting.

Mr. BORAH. Mr. President, there is something in the suggestion of the Senator from Minnesota. But, on the other hand, it occurs to me that a sufficient number of people will always be found in any State among the great mass of the people to compel the calling of a convention.

Mr. CLAPP. That gives rise to another question. While I think the Senator from Texas will hold a different view, it seems very clear to me that the convention which would be provided for in each State would have to be called by the State itself, and, naturally, by the legislature, although I think the suggestion may be argued that, if a State refused to act at all, Congress could provide for the convention.

Mr. BAILEY. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho further yield?

Mr. BORAH. I do.

Mr. BAILEY. I think that while that is true, a State refusing to act would simply be recorded in the negative. The Constitution only requires that three-fourths of the States shall ratify the amendment; and if the remaining States did not hold conventions, the amendment would become a valid part of the Constitution whether they ever acted at all or not. I think that in any State where the legislature acted on the matter at all, it would obey the resolution and call a convention.

I wish to say to the Senator from Idaho that if there would be any question of the expense deterring any State from calling a convention, I myself should favor a federal appropriation to pay the expense of the conventions in every State. That would undoubtedly obviate that difficulty.

Mr. BORAH. Mr. President, the question of expense does not disturb my mind. I was simply suggesting that as a possible argument against it. I have no fear that the amendment will fail of adoption if we can keep it where it will receive the benefit of public opinion in such a way and in such manner as to have an open expression of the people upon the subject. Therefore it seems to me, in view of the great importance of the matter, that, regardless of the question of expense and regardless of any inconvenience, we can well afford to place it where it will be the single issue which will be up for consideration.

Mr. NELSON. Will the Senator from Idaho allow me to make a suggestion?

Mr. BORAH. Certainly.

The VICE-PRESIDENT. The Senator yields.

Mr. NELSON. I should like to suggest to the Senator from Idaho this fact: I think I am right in stating that every constitutional amendment that has been adopted up to this time has been ratified by the state legislatures and not by conventions. This, however, is the point I am coming to: In case we should adopt the amendment of the Senator from Texas providing for submitting the question to conventions in the several States, ought we not to follow it up with legislation by Congress directing how the conventions shall be called and held?

I submit that question to both the Senator from Texas and the Senator from Idaho.

Mr. BORAH. That might be a very advisable thing to do; but I do not think all of our constitutional amendments have been ratified by state legislatures. My recollection is that the last amendment was adopted by conventions which were improvised for the very purpose of seeing that it was ratified through a large number of the States where it was understood that if the course were pursued which had ordinarily been pursued, it would not be ratified.

Mr. OVERMAN. May I ask the Senator a question?

Mr. BORAH. Yes.

Mr. OVERMAN. Suppose 12 States should refuse to call conventions, what would be the result?

Mr. HEYBURN. Mr. President, I should like to call attention, with the permission of the Senator——

The VICE-PRESIDENT. Does the Senator from Idaho yield to his colleague?

Mr. BORAH. I do.

Mr. HEYBURN. I should like to call attention to the fact that the States do not have to call conventions. Congress provides for the conventions, if we have conventions instead of legislatures to do the ratifying. That is provided in Article V of the Constitution.

Mr. OVERMAN. Will the Senator kindly read that article, so that I may have the benefit of it?

Mr. HEYBURN. I will read the article, so that it may be in the RECORD:

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments.

Mr. OVERMAN. But suppose the States do not call it?

Mr. HEYBURN. This is not a state convention; it is a national convention. Just listen:

Which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions—

Now, this is a second class of conventions—

Or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress.

There are two classes of conventions provided for.

Mr. OVERMAN. Does this resolution propose the calling of a convention?

Mr. HEYBURN. There is a provision here under which a national constitutional convention may be called.

Mr. OVERMAN. Is there any provision of that sort in this resolution?

Mr. HEYBURN. That is not the one that we are now dealing with. No one, I think, has proposed that.

Mr. BAILEY. The first is a convention to propose amendments, and the second a convention to ratify amendments.

Mr. HEYBURN. If my colleague will permit me, I will say that no one is proposing to call a national convention to propose amendments. The conventions that are under consideration are those that Congress, not the legislatures of the States, shall provide; and if Congress shall provide them, of course it shall provide the details.

Mr. BAILEY. I hardly think the Senator is correct about that. It is a very close question. The Constitution says that amendments to the Constitution shall be ratified by legislatures or conventions. I do not think Congress has power to call a convention any more than to convene the legislature of a State to pass on an amendment.

Mr. HEYBURN. No; I do not think it has, either.

Mr. BAILEY. And yet its powers seem to be the same with respect to the convention as with respect to the legislature. I will say to the Senator from Minnesota, who raised the question, that the failure of a State to act would simply be equivalent to a negative action.

Mr. HEYBURN. Will the Senator allow me to make a suggestion? I think the second provision in regard to conventions was intended to apply in case the legislature refused to act.

Mr. OVERMAN. Suppose Congress passed an act providing for the calling of a convention, and the State did not call it, and the people did not meet together, how would Congress act? Would the President go and arrest the people and bring them into a convention?

Mr. BAILEY. Oh, no; but I think if Congress had the power to call a convention they could appoint officers and open the polls, and if only one man voted in the State that one man would be the majority. But that is an extreme case and one not apt to arise.

Mr. HEYBURN. Right in that connection let me call attention to the language. First, it provides that Congress may submit the matter to the legislatures. It could not, of course, compel the legislatures to act. Then it provides an alternative "or by conventions in three-fourths thereof"—three-fourths of the States—"as the one or the other mode of ratification may be proposed by the Congress."

I am quite convinced, though I may be wrong, that that was intended as an alternative provision. I think it was intended that where the States should refuse or neglect to act, Congress might call these conventions in the States and provide the machinery for them rather than have defeated its purpose of submitting an article for the amendment of the Constitution. I think it was intended to provide against the possibility of the States refusing to act.

Mr. BAILEY. Mr. President, with the permission of the Senator from Idaho, I will say that I think it was intended to provide against the very contingency that now confronts us. I think it was intended to allow the direct question to be made, stripped of every other question, rather than to commit it to a legislature elected to deal with many questions.

Mr. HEYBURN. I think that would be the effect rather than the intention. That undoubtedly would be the effect.

Mr. SUTHERLAND and Mr. BACON addressed the Chair.

The VICE-PRESIDENT. To whom does the junior Senator from Idaho now yield? Several Senators are asking for recognition.

Mr. BORAH. I will yield, so long as I can gain any information in reference to constitutional law.

The VICE-PRESIDENT. But to whom does the Senator yield?

Mr. BORAH. I yield to the Senator from Georgia.

Mr. BACON. Mr. President, I merely wish to suggest that there is nothing in the Constitution that contemplates that there shall be action by all of the States. Whenever there is action by a sufficient number of States the action is conclusive, even if the other States never act.

An illustration of that is found in the fact that in each ratification heretofore the ratification has been made by the legislatures, and the Government has never waited until all the legislatures have acted. Whenever a sufficient number of the legislatures of States have acted, communication has been made to Congress of the fact that the amendment has been adopted.

The first action by legislatures was as to the first 10 amendments; and it so happened that there were three States not included in those enumerated when the communication was made to Congress. The first 10 amendments were ratified by New Jersey, Maryland, North Carolina, South Carolina, New Hampshire, Delaware, Pennsylvania, New York, Rhode Island, Vermont, and Virginia, which constituted a sufficient number, and communication was then made to Congress to that effect. The three States of Massachusetts, Connecticut, and Georgia were not included at all.

Mr. BAILEY. If the Senator will permit me, I will reenforce him in his suggestion. The original Constitution provided that whenever nine States ratified it, it should become effective among those ratifying; and the Government was organized before all of the States had ratified the Constitution.

Mr. BACON. The two States of Rhode Island and North Carolina were not in the original organization at all. For two years, I think, the Federal Government had the great disadvantage of proceeding without the aid and cooperation of the State of Rhode Island.

Mr. BAILEY. Some people wish they never had ratified it. [Laughter.]

Mr. SUTHERLAND. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Utah?

Mr. BORAH. I yield.

Mr. SUTHERLAND. Mr. President, I think the Senator from Texas is clearly right in reference to one proposition he states; that is, that the amendment can be ratified whenever three-fourths of the States act, although one-fourth of them may fail to act at all on the question. But with reference to another suggestion the Senator made, viz, that if a legislature should prove recalcitrant, and decline to call a constitutional convention, Congress might do so, it seems to me the language of the Constitution itself indicates that Congress has no such power.

Mr. BAILEY. Mr. President, when the Senator comes to examine his remarks, I hope he will not represent me as saying that, because I distinctly stated that I did not say it.

Mr. SUTHERLAND. Then I will alter what I said by saying that the Senator from Texas suggested that such a method might be adopted. The language of the constitutional provision is not that Congress may call a convention, any more than it may call a legislature; but only that Congress may propose the method to be adopted. In other words, Congress may propose that either the legislature shall act upon the matter, or that a convention shall act upon it. But the power of Congress is simply to propose it, and not to call it.

Mr. BACON. With the permission of the Senator from Idaho, I desire to add a word to what I have said.

Mr. BORAH. Very well; I yield to the Senator from Georgia.

Mr. BACON. In order that there may not be any question as to my attitude on this subject, I will state that there is no question whatever in my mind that it is clearly beyond the power of Congress, in any instance, to call one of these conventions.

Mr. DIXON and Mr. CLAPP addressed the Chair.

The VICE-PRESIDENT. To whom does the Senator yield?

Mr. BORAH. I yield first to the Senator from Montana. I will yield later to the Senator from Minnesota.

Mr. DIXON. Mr. President, while I shall vote for the second amendment of the Senator from Texas, I desire to call his attention and that of the Senator from Idaho to the fact that his first amendment may possibly complicate the constitutional amendment more than it will help it. When you convene the people of a State in a constitutional convention for the purpose of considering one matter, are not all matters affecting the constitution of that State open to discussion?

Mr. BAILEY. Not at all, Mr. President, because the call would be to pass upon this federal question. They would have absolutely no power over the organic law of the State, unless, indeed, the legislature submitted those questions to them. If such questions were submitted in the orderly and lawful way, it would be no objection that they were permitted to pass upon them. But being called for this purpose, there could not possibly be communicated to them any power to deal with their local constitutions by such a call.

Mr. BORAH. Mr. President, if the state convention were going to deal with the state constitution, it would have to be called in the manner the constitution of the State provided for calling a convention for that purpose. If we should provide here for the calling of a convention and it should be called pursuant to that provision, it would have no jurisdiction and no power to deal with the subject of the state constitution, unless it were called pursuant to the manner in which the state constitution provides it shall be called for the purpose of dealing with amendments to the state constitution.

Mr. DIXON. But, with all due deference to what the Senator from Idaho is now saying, when the people of a State, through their representatives, assemble in a constitutional convention, do they not have primary powers to do almost anything, subject to ratification by the State?

Mr. BORAH. They have.

Mr. DIXON. Then, in view of the well-known opposition to constitutional conventions on the part of a large proportion

of the people of a State, I can not help believing that the calling of constitutional conventions will complicate more than it will help the general purpose we have in view.

Mr. BORAH. If a convention should be called in pursuance of this suggestion from Congress, it would not have any power to deal with amendments to the state constitution unless it were called in pursuance of the manner provided by the state constitution for dealing with the subject. If a convention called under this suggestion should undertake to pass on amendments to the state constitution, it would be acting wholly beyond its jurisdiction. The various state constitutions provide by what means and method conventions shall be called for that purpose, and they must be called in pursuance of the provisions of the state constitutions.

Mr. HEYBURN. I suggest, Mr. President, that Congress has no power to call a convention for the purpose of amending or dealing with state constitutions.

Mr. BORAH. The convention would have no power to deal with it when it assembled.

Mr. BURTON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Ohio?

Mr. BORAH. I yield.

Mr. BURTON. I desire to point out another obstacle besides that named by the Senator from Montana; that is, in case the ratification is to be by convention: At least one of the States has a provision that constitutional conventions can only be called once in twenty years.

Mr. BAILEY. If the Senator will permit me, that evidently has reference to a constitutional convention called to deal with the state constitution. This is not a constitutional convention within that meaning.

Mr. BURTON. I have thought of the very point the Senator from Texas makes; but I do not think it sufficiently answers the contention I have stated. The constitution of each State specifies clearly the manner in which legislative authority may be exercised. Popular government has its expression in the ways set forth in the state constitution. Those are two: First, by the legislature; second, by constitutional conventions. There is no recognition in any state constitution, so far as I am aware, of any other method of calling a convention to express the popular will. If a convention not authorized by the constitution of a State should be called to act upon a proposed amendment to the Constitution of the United States, it would be doing something not recognized by the legislative authority. There is no means provided for determining in that way what is the will of the people of the State. We can not devise a new means of expressing what the people of the State of Texas or any other State desire, simply to fit an emergency. The expression of their wishes is confined to the methods set forth in the state constitution.

In case such a limitation of time exists, it might entirely prevent some of the States from expressing the wish of the people of that State on this constitutional amendment. It would seem, from some things that have been said here, that the opinion is entertained that this "three-fourths" means three-fourths of the States in which there is an expression on the subject.

Mr. BAILEY. Oh, no. No one contends that.

Mr. BURTON. That clearly can not be the case. I so understood, however, from some of the statements regarding it. Certainly it would require three-fourths of 46 States. I think that may be conceded.

Mr. OVERMAN. Thirty-five States.

Mr. BURTON. Thirty-five States, in any event.

Mr. RAYNER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Maryland?

Mr. BORAH. If I may be permitted to do so, I will yield the floor.

Mr. RAYNER. Mr. President, I should like to suggest to the Senator from Ohio that there does not seem to be any question about any of the propositions stated by the Senator from Texas and the Senator from Georgia. If three-fourths of the States, by convention, ratify the amendment, that is the end of it. But there is one point which I should like to submit to the Senator, and that is this: If the States fail to call the legislatures together, and if the legislatures fail to act, there is no provision in the Constitution of the United States and no power in Congress to make them act. I do not think there is the slightest possibility of that occurring, but I deny absolutely the power of Congress to compel the States to act.

Mr. BURTON. I intended to say a word upon that subject, Mr. President. While I may have stronger views on the subject of federal authority than some Senators have, I do not believe it is possible to compel a State to act upon a proposed amendment to the Constitution. The initiative must rest with the State itself. It must be the voluntary act of each State. It is no more possible to compel a State to convene its legislature or call a convention than it is possible under existing law to compel an elector to vote at an election. That is a right incident to the freedom that belongs to an elector; and it is also the privilege of the State to act or not to act, as it may choose.

Mr. CLAPP. Mr. President, I desire to call the attention of those who are particularly back of this amendment to the fact that the amendments to the Constitution which have been adopted were in every instance, I think, referred to the legislatures. The only amendment which was referred to a convention was the amendment which was referred by Congress at the very close of President Buchanan's administration. It was, I think, the last bill he ever signed; and the only conventions which were called were in the States of Ohio and Illinois, if I remember correctly.

As far as the method of accomplishing this result is concerned, I for one am disposed to follow the wishes of those who are moving in the matter. But it does seem to me that it is a departure and may present complications, while the other is a well-understood, well-traveled road. And as a matter of my own personal advice and view, I should prefer to leave it to the States, as has been done heretofore.

Mr. DIXON. Mr. President, I desire to do whatever will aid in bringing this matter to a constitutional amendment. I want again to call the attention of the Senators who at first thought may be favorable to the scheme of calling state conventions to the fact that in many of the States the expense of holding elections for delegates to a constitutional convention will be so large that the question of expense will be used as an argument against it. I think in my State it will cost the State $100,000 to hold its constitutional convention and the election for the choosing of delegates.

I am convinced this will complicate matters. On the other hand, if the joint resolution passes both the Senate and House, as it will undoubtedly, the governor of each State in the Union will certify to the next general assembly of the States the fact that the joint resolution has passed both Houses of Congress, and it will be brought directly and forcibly to the attention of the people in every State.

I for one believe that this amendment will carry in nearly every State of the Union. Suppose, as it has been intimated, that influences should be used in a State with the members of the legislature against it and that legislature returns and goes home without adopting the amendment, it makes it the burning live issue in that State. The joint resolution of Congress does not become functus officio because one legislature of a State at that time has not adopted it. It will rest on the legislatures that will assemble in the future, and whenever three-fourths have finally ratified it, whether it be one, two, three, five, or ten years, it then becomes a part of the fundamental law of the United States. I am thoroughly convinced that the convention method will complicate more than it will help. That is my individual view of the matter.

Mr. HEYBURN. I should like to ask the Senator a question before he takes his seat. There is no limit placed by the Constitution upon the time within which a State may act in ratification.

Mr. DIXON. That is what I am saying.

Mr. HEYBURN. Does the Senator contend that it might be submitted to an indefinite number of subsequent legislatures, or would the action, either positive or negative, of the legislature to which it was first submitted exhaust the right?

Mr. DIXON. I presume if the legislative action were positive or negative it would be exhausted in that State.

Mr. HEYBURN. Then, if the legislature to which it was submitted fails to act that would be the equivalent of a rejection of the amendment.

Mr. DIXON. No; if the legislature failed to act, I do not think for a moment it would be.

Mr. HEYBURN. Upon the question of submission, if no action should be taken——

Mr. DIXON. Until the legislature finally acted either positively or negatively, I think unquestionably.

Mr. HEYBURN. Is not refusal to act action in itself?

Mr. DIXON. No; I do not think so for a moment.

Mr. HEYBURN. Does a man who stays away from the ballot box participate in an election? Is not his act as binding if the result is obtained by reason of his absence as though he voted?

Mr. DIXON. Yes; but the fact that a legislature fails to act——

Mr. BACON. If the Senator will permit me a moment, without presuming to pass upon the legality of the subsequent act,

the fact is that the States of New Jersey, Oregon, and Ohio had ratified the fourteenth amendment, and they subsequently formally withdrew that ratification.

Mr. HEYBURN. They only thought they withdrew it.

Mr. BACON. I have simply called attention to the fact, without saying whether it was a valid withdrawal or not.

Mr. HEYBURN. The Senator would not contend that a State might go on voting pro and con on a constitutional amendment indefinitely.

Mr. BACON. I have not made any suggestion to that effect, but I was just calling attention to the fact that three States did think they had that right.

Mr. HEYBURN. The Senator, I think, would not contend——

Mr. BACON. I myself would be greatly disposed to question the right.

Mr. RAYNER. If that is so, then the fourteenth amendment is invalid, because they did exactly what the Senator from Idaho says they had no right to do.

Mr. HEYBURN. Mr. President, I do not care to have it left that way. I think the facts——

Mr. RAYNER. No; they voted first against it and then for it. The contention we have always made is that the fourteenth amendment is unconstitutional.

Mr. BROWN. Mr. President, I trust that the Senate will reflect a moment before it concludes to adopt any of these amendments. The proposition to refer it to the state conventions for ratification, in my judgment, does not appeal and ought not to appeal to our favorable consideration, provided we desire to be on the safe side and are in favor of early action on the joint resolution by the States.

The fact that first confronts us with respect to referring it to conventions is this: We do not know who will call the convention, whether the governor or the legislature. There might be a difference of opinion about that. If it shall be called by the legislature, then we have to wait for the legislature to convene before there is even a call for a convention. That means delay; it means postponement; and I can not understand why we should longer postpone the opportunity of the people to pass upon this question.

I have not yet heard in this debate one single reason why the convention method is better than the legislative method of ratification. The fact remains that of the 15 constitutional amendments which have been adopted, every one has taken the course that this joint resolution proposes this amendment shall take.

Mr. BORAH. Does the Senator contend that the fifteenth amendment was ratified entirely by state legislatures?

Mr. BROWN. I have the record of it here.

Mr. BORAH. Has the Senator Secretary Seward's certificate certifying its adoption?

Mr. BROWN. It says:

> The fifteenth article was submitted to the legislatures of the several States, there being then 37 States, by a resolution of Congress passed on the 27th of February, 1869, at the first session of the Forty-first Congress, and was ratified, according to a proclamation of the Secretary of State, dated March 30, 1870, by the legislatures of the following States—

Then they follow.

Mr. BORAH. The Senator has not Secretary Seward's certificate of ratification?

Mr. BROWN. This states that Secretary Seward certified that it had been ratified by the legislatures of 29 out of 37 States. So the joint resolution proposing the fifteenth amendment was ratified by 29 state legislatures and not by 29 state conventions.

Mr. BACON. Will the Senator from Nebraska permit me to recur for a moment to the question propounded by the Senator from Idaho?

Mr. BROWN. Certainly.

Mr. BACON. I did not at that time have it before me. It seems that the fifteenth amendment was ratified by the requisite number of States and was proclaimed, and that among those ratifying it were the States of North Carolina, South Carolina, Georgia, and Virginia. They were necessary to the number required to secure the ratification. Prior to that time the legislatures of the States had rejected the amendment; and it was after they had rejected it that subsequent legislatures ratified it. It was only by means of counting those four States that the fifteenth amendment was declared as having been ratified; and they had previously rejected the amendment, each one of them.

Mr. RAYNER. North and South Carolina were two of the States.

Mr. BACON. North Carolina, South Carolina, Georgia, and Virginia.

Mr. BROWN. Unless some good controlling reason is presented why we should change our method of amending the Constitution, I do not think we can justify our vote against following the usual method. The legislature is an existing institution in every State. A convention would have to be arranged for. The legislatures, by virtue of the several state constitutions, meet every two years in most of the States. We do not have to wait for somebody to call a convention. The legislature is already called. We do not have to worry about the expense of the legislature, because the expense is already incurred.

In addition to all these objections, Mr. President, there is one other which ought to cause Senators in this body to vote against the proposed amendment for ratification by conventions. I know the fight that has been made in a large majority of the States of this country for a primary law. There has been a fight of the people in a majority of the States of the Union to get away from legislators who are nominated in conventions, and in many States they are now nominated at a primary. Members of Congress who used to be nominated in conventions are now nominated at a primary. The members of the several legislatures of the States that have primary laws do not have conventions. They prefer the other method. They are nominated on primary-election days.

Mr. BAILEY. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nebraska yield to the Senator from Texas?

Mr. BROWN. Certainly.

Mr. BAILEY. The Senator is making an argument now without knowing where it is going to lead. I think he will not consider it a very valid one when he analyzes it. The same men who would be elected to this constitutional convention would be nominated in exactly the same way as the men who are elected to the legislature, and so the talk about the different methods is absolutely without foundation.

Mr. BROWN. The trouble with the argument of my friend is that it may apply to his State, where delegates to a convention are selected at a primary, but it does not apply in some of the States of the Union that I know of, because they have no law for electing delegates to any convention at a primary.

Mr. BAILEY. Then the members of the legislature are not selected in that way.

Mr. BROWN. Yes; the members of the legislature in my State are selected at the primary, but our delegates to a convention, should the party have one for any purpose, are not selected at a primary. There is no provision for the selection at a primary of delegates to this convention.

Mr. BAILEY. That is true. My own State makes precisely the same difference. Yet the Senator does not mean to say that he thinks it is safer to take the expression of a legislature elected with reference to all other questions, including this, than it would be to take the expression of a convention elected with reference to this alone. No matter how a man is nominated, the only question——

Mr. BROWN. That is just what does matter—how he is nominated.

Mr. BAILEY. Let me finish and then I will show you that you are mistaken. The only issue here will be, Are you in favor of this constitutional amendment—not of some constitutional amendment, but of this one? And the candidate who is in favor of it will say so, the candidate who is not in favor of it will say so, and if a candidate elected declaring himself in favor of it would go to that convention and vote against it, he would never go back home.

Mr. CURTIS. Mr. President——

The VICE-PRESIDENT. Will the Senator from Nebraska yield to the Senator from Kansas?

Mr. BROWN. Certainly.

Mr. CURTIS. I should like to ask the Senator from Texas if he does not believe that the question of amending the Constitution would be the paramount issue, even though it was submitted to the legislatures?

Mr. BAILEY. That is probably true, and therefore I would dislike very much to see every legislature in the United States selected with reference to this federal question and without reference to the local questions. That is exactly what I want to avoid.

Mr. BROWN. Mr. President, there can be no doubt, I think, in the mind of any candid man that, should the joint resolution pass Congress, in every State in the Union every political party would be in a race to see which could get behind the joint resolution first. There could be found no one opposing the joint resolution, which only proposes that Congress shall have the power to levy incomes. You can not find a man on

this floor, I believe, whether he favors an income-tax law or not, who is against giving to Congress the power to levy the tax if it wants to do so.

Mr. BORAH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nebraska yield to the Senator from Idaho?

Mr. BROWN. Certainly.

Mr. BORAH. If it is carried to the legislature, a multitude of local affairs or other affairs are engrossing the attention of the people. We have had year after year in our State constitutional amendments submitted which were important, and yet during the campaign they were lost sight of; no one mentioned them; and when the returns came in they were sometimes adopted by a very small vote by practically no vote being cast on the subject at all.

My idea in this matter was that if this was the only issue, the minds of the people would be settled upon the issue, and that above all things when it got into the legislature you could not logroll important issues against it in order to defeat it, because it would be the only issue there when you got into the legislature. If you go by the way of the legislature, there are a multitude of issues there which detract from the consideration of this measure. But if we have a convention it will be the only issue there.

So far as the expense is concerned, it may be expensive, but I want to call the attention of the Senator from Nebraska to the fact that if it should transpire that 12 States in the Union should refuse to adopt it, it would be the most unfortunate thing, in my judgment, which has happened in the political history of the United States since the civil war, if not in its entire history, because the contest would be over. We would not go back to the courts and we would not go again to the people, and this fight would be permanently closed.

Mr. BROWN. Mr. President, I do not agree at all with the views of my good friend from Idaho that the fight would be closed if 12 States should fail to ratify this amendment.

Mr. STONE. If my friend will permit me, on the subject of expense, while it would be an exceedingly unusual thing to do, it seems to me it could be obviated, and perhaps in the circumstances of this particular case it ought to be obviated, by inserting as a part of the amendment, if the convention plan is adopted, a provision that the Congress shall, by appropriation, provide for the reimbursement of the States for any expense they may be put to in holding the conventions.

Mr. BROWN. Mr. President, that illustrates the danger we are in right here. Every proposition and every suggestion involves some other legislation; some other step must be taken. Tell me why it is that we are so loath to follow the trodden path in amending the Constitution? What has happened that it is necessary to discover and adopt an untried plan?

Mr. BAILEY. Will the Senator permit me?

Mr. BROWN. Certainly.

Mr. BAILEY. I answer him without a moment's hesitation. Because the last two occasions on which we tried it we found ourselves amidst an infinite difficulty. Both the fourteenth and fifteenth amendments to-day are of doubtful validity, in consequence of the action, and varying action, of the several States. Remembering the trouble at the close of the great war that was found in adopting those amendments, I am not surprised that Senators would prefer a different course.

Mr. BROWN. Do I understand that the Senator from Texas favors the convention method of ratification because he doubts the validity of the course that was pursued relating to the fourteenth and fifteenth amendments?

Mr. BAILEY. Oh, no; the Senator is too bright to suppose that I meant that. He did not understand that I stated that, except in reply to his demand to know why we should leave these beaten paths. I answered that those paths had not been paths of safety with reference to the last two amendments to the Constitution.

Mr. BROWN. So far as the record shows, they have been paths of safety. Those amendments are a part of the Constitution now.

Mr. BACON. Will the Senator permit me? It appears that in the case of the fourteenth amendment—I a few moments ago misstated it to be the fifteenth—four States which had rejected the amendment subsequently ratified the amendment.

The question was raised by the senior Senator from Idaho [Mr. HEYBURN] as to whether, when a State had once acted, it had not exhausted its power. I said to him very frankly I was inclined to think that was true. I hope the Senator from Nebraska will give me his attention, because I am calling his attention to it.

Mr. BROWN. I beg the Senator's pardon.

Mr. BACON. Four States which had rejected the fourteenth amendment afterwards ratified it. The ratification of those four States was necessary to make up the number required for that ratification.

The particular point to which I wish to call the attention of the Senator from Nebraska is this: Of course the only ground upon which the validity of the fourteenth amendment could be rested would be the ground that the State did have the right to change; but unfortunately if that is true, there were other States that changed the other way. They were States which had ratified it, which, prior to the time when they were counted as having thus ratified it, withdrew their ratification. They were the States of New Jersey, Oregon, and Ohio. So, if the right to change is recognized, they were still three short; if the right to change was not recognized, they were four short. As suggested to me by the Senator from North Carolina [Mr. OVERMAN], it was not adopted.

Take the case of the fifteenth amendment. The fifteenth amendment required 30 States to ratify it, and there were among those 30, which were counted as having ratified it, the States of Ohio and New Jersey, and each of those States prior to the time when they were counted as having ratified it had withdrawn their ratification.

Again the fact is presented that if they had a right to count them upon the ground that they had a right to change their minds and change their action, then it unfortunately happens that the State which was necessary to make up 30 had withdrawn its ratification, to wit, the State of New York. So in one case, if the State had the right to withdraw or to change its action, New York having withdrawn, there were only 29, and that was 1 less than necessary for ratification. On the other hand, if they did not have the right to change, 2 of the States which had previously refused to ratify were counted among those having ratified it, and that would leave only 28. In the one case there would be 29 and in the other case 28. You can take either horn of the dilemma you wish.

Mr. BROWN. I am familiar with that argument and with the point that we might not have a valid ratification of the proposed amendment. We need not waste any time, I think, in discussing that branch of this subject. If my judgment is correct, there will be no ratifications that will be withdrawn by any State on this joint resolution. I do think that it is the easy, the natural, the customary, the logical, and the safe thing for us to pass a joint resolution which refers it to the legislatures elected by the people of this country and not to conventions.

Now, then, Mr. President, as to the other amendment offered by the Senator from Texas, where he asks that the words "and the right to grade" be put in, I think already the language of the joint resolution gives Congress the power to grade the income. It gives the power to lay and collect, and when the Supreme Court decided, as they did, that persons, associations, or corporations doing a certain line of business must pay a tax measured on their income, so much earned, they declared the power to be in Congress to grade the taxes, provided they had the right to lay them. The power to lay a tax includes the power to grade. Of that no doubt can reasonably exist, in my judgment.

The amendment proposed by the Senator from Kansas expresses a principle in which I have always believed, and I believe the principle is fair and right and ought to be in the Constitution; but the Senator from Kansas will understand that if he had the power under the parliamentary situation to offer the amendment, it means the death of both propositions when it comes to a final vote in this body. I do not base that upon any guess, because there was a roll call in the Senate last year on the proposition to amend the Constitution so that the people would have a right to elect their Senators, and on that roll call out of 30 Democrats I think 9 voted in favor of such an amendment, and there were only 12 out of 60 Republicans who voted for it, the rest all voting, if they voted at all, to refer it to the committee.

Mr. LA FOLLETTE. Mr. President, the Senator has just made a statement that I was going to draw from him if possible, that the roll call was not upon the passage of the joint resolution, but to refer it to a committee. The direct issue was evaded in that case, as it is always sought to be evaded when that question comes up.

Mr. BROWN. The Senator from Wisconsin did not hear me finish the remark. The vote was to refer it. That meant to assassinate it, and every Senator knew that is what it meant. If I had voted to refer, I would have voted to kill it.

Mr. DIXON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nebraska yield to the Senator from Montana?

Mr. BROWN. I do.

Mr. DIXON. To keep the record straight, when reference is made to the Republican vote, I think the Senator should also add the fact that there was a larger percentage of Republican than Democratic Senators in this body who voted against sending the joint resolution to committee.

Mr. BROWN. I did not care anything about the political significance of it. I simply wanted to show that there is no possibility, with the Senate constituted as it is to-day and on record as it is, of having such an amendment get two-thirds of the majority of this body. Then tell me why load it on this joint resolution? I would be glad to support the Senator's resolution, if it can come up so that it does not kill itself and at the same time kill this one.

Mr. MONEY and Mr. NEWLANDS addressed the Chair.

Mr. BROWN. There are several Senators who want to talk, and I think I will yield the floor. I hope that all these amendments may be voted down. I believe that the joint resolution is drawn simply; it is drawn in language that is not susceptible of two or three constructions; it vests the power in Congress to lay and collect income taxes; and that is the proposition we want to adopt.

Mr. MONEY. Mr. President, I am one of those who believe that there never will be another amendment to the Constitution of the United States. Already, I understand, about 13 States have called for a convention of all the States. If that convention should be called, as it will ultimately be, I have no doubt the first resolution that will be offered will be to abolish the Constitution of the United States for the very reason that we have been for some time acting under a suspension of it, and those who are in authority are heartily tired of it.

The difficulty that presents itself to my mind is to secure the 12 States which everybody admits are quite likely to defeat any amendment of this sort to the Constitution. The method presented by the Senator from Texas is probably the best, but the same influences that will control the votes of the legislature will prevent the legislature from calling a convention. The item of expense will be considered by some of the frugal-minded legislatures in some of the States, also.

The great difficulty that we had in passing the last two amendments to the Constitution, which seemed to be so very necessary in our system of political economy as to fix the status of several million freedmen, would seem to argue the necessity of a ratification of the income-tax amendment, yet we know the difficulty. I am one of those who do not believe that either the fourteenth or fifteenth amendment was ever validly made a part of the Constitution.

It has been said that when a State has voted to ratify or reject, it has exhausted its power. I do not believe there is any authority in good common sense and sound reasoning for any such suggestion. There is no doubt that it has been acted upon; that is true, but the action was forced by the exigency of the political situation. As a matter of fact, 4 Southern States that had rejected the fourteenth amendment afterwards assented to it. But in the meanwhile 2 States that had assented to it had withdrawn their assent and rejected it.

One was the State of Ohio and the other the State of New Jersey. The paper that was then issued by the legislature of New Jersey is one of such high statesmanship that it deserves to rank next only to the Declaration of Independence. It is a paper that can be studied with great profit by any student of our Constitution and of our theory and system of government. My friend from Georgia [Mr. BACON] stated that there was a third; but he is mistaken about that. The State of Oregon, it is true, rejected the amendment, but that was in October, and the promulgation of the ratification was made by the Secretary of State, under the law of 1818, on the 28th of July, 1868. So the action of Oregon simply meant to express a change of sentiment in that State, and in no effect validated or invalidated the ratification. It had nothing to do with it. But it was held that four States had first rejected the amendment and afterwards ratified it; and they were counted, because they came in before the promulgation.

I am not one of those who believe that a promulgation by the Secretary of State of the ratification of three-fourths of the States of an amendment to the Constitution is at all necessary to its validity. It is just exactly as he is required to print the laws of Congress. Nobody will assume that he has got anything to do with passing the laws of Congress or giving them effect. He simply gives notice to the public that they have been passed, and superintends the printing. So, in the same way, the act of ratification consists of the action of the two Houses, then of three-fourths of the States; and the Secretary of State has nothing to do with it, except to announce that to the public; and the event is closed.

However, the State of New Jersey and the State of Ohio had changed; but they were not permitted to make that change. John Sherman, then a Member of the Senate from the State of Ohio, introduced a resolution declaring that three-fourths of the States of the Union had ratified the fourteenth amendment. As a matter of fact, that was ultra vires. The Senate had no business to concern itself any further. That clause of the Constitution which provides for its own amendment particularly points out the way in which it shall be done.

It says that such joint resolutions shall receive the consent of two-thirds of the Members of both Houses. There has been some contention about whether that meant two-thirds of those present or two-thirds of the Members constituting each House. According to my view of it, proper reason and common sense would say it required two-thirds of the membership of both Houses; but it has been uniformly held by both Houses that it only required two-thirds of those present and voting; that all the intermediate steps leading up to a final vote upon the amendment required only a majority of those present and voting, a quorum being always presumed to be present, as a matter of course. I do not accede to that; but there is no way to change it, of which I am aware. That has been the uniform practice of both Houses, and they have declared it over and over again. The last ruling on that subject was by Mr. Reed, of the State of Maine, as able a man as has ever been Speaker of the House of Representatives. I recollect that he said in his ruling that it seemed unnecessary for him to rule, primarily, because the decisions of preceding Speakers had been so uniform upon that point.

But we have had also other decisions, even coming down to the decision of the Supreme Court, that the President of the United States had to sign such amendments. The first 12 amendments proposed by Madison were signed. Ten were adopted afterwards. The eleventh amendment was signed by John Adams, which was adopted. Then the twelfth amendment of Mr. Madison was signed, and that was adopted. The thirteenth amendment was signed by Abraham Lincoln, not because it was believed that it was at all necessary, because the President is not included in the amending of the Constitution as one of those who have anything on earth to do with it, but it was said that it was extremely fitting that the man who had emancipated the slaves by proclamation should have the privilege of signing a legislative amendment to the Constitution, ratified by the States, which did the same high office. Consequently he was permitted to do so. Then it was that Trumbull, of Illinois, offered a resolution that the approval of the President was totally unnecessary, and it passed the Senate without a single dissenting vote. So that, though we have precedents which seem to have no foundation in good reason and that are cut short whenever the opportune moment comes, it seems the President has nothing whatever to do with the amendment of the Constitution.

Mr. President, I do not believe that this amendment to the Constitution will ever be a part of it. I am willing to vote for it, and I should like to see it adopted, if possible; but I am quite sure that those influences which have prevented a vote on the income-tax amendment in this Senate will also prevent a vote in at least twelve of the legislatures of this Union. We can feel quite sure that an act of such far-reaching importance, that touches the pockets of very many rich people, is not very likely to become a part of the organic law of our Republic or of our confederation.

I should be very glad, Mr. President, to proceed upon the lines laid down by the Senator from Texas [Mr. BAILEY], the Senator from Iowa [Mr. CUMMINS], and the Senator from Idaho [Mr. BORAH], which, I believe, is the shortest and the simplest way. I am not one of those who regard the judgment of the Supreme Court as an African regards his particular deity. I respect such a decision just exactly to the extent that it is founded in common sense and argued out on reasonable logic, but when it violates the law of common sense, then I cease to so regard it, except that as a citizen I am bound by it. As a legislator, I have no more regard for it than I should have for a decision of a magistrate in one of the counties of the State of Mississippi, especially when I know it runs counter to the decision of a hundred years and was decided by a vote of five to four and that one judge who voted in the affirmative changed his mind somehow in the shadows between two different hearings.

I do not say that by way of disparagement of anybody, because it is only the fool who never changes his own mind; but there were no new facts brought out; there were no new arguments adduced; and the member of the court, whoever he was,

changed his mind. He seems likely to go down to the grave or to posterity in obscurity so far as that act is concerned. We have, then, a doubly doubtful decision of the Supreme Court. I do not think there is a good lawyer in this country who believes to-day that the decision of that court is a correct decision. It is so open to question that the best lawyers in this Senate have not hesitated to bring forward here, as an amendment to this tariff bill, a provision for an income tax to be a part of the proposed law; and we are met with the proposition to change the Constitution.

I am sorry that our great and good President has changed his mind upon this question. He once thought, and very lately, during the height of the canvass, a proposition made by the convention of Democrats at Denver, and containing a proposition such as is being discussed this morning, absolutely useless, because the court, with a little change of personnel, and probably without it, would not reaffirm its decision, but would reverse it. We find, however, that things change.

Now, Mr. President, I want to say that I for one hope that something can be done to fix in the Constitution or the law—either one being satisfactory to me—this amendment. There is not a civilized country in the world which does not have an income tax; there is not a civilized country in the world that would surrender it at any cost. We have the example, at least of one country, from which we have taken our laws and our general administrative system, where the tax is imposed by the people who pay the tax. It is to the eternal honor of both the British Houses of Parliament that the tax which they in great part have to pay is assessed by themselves. It is not only a tremendous source of revenue, but it is the governing source of revenue. There is no continual tinkering with the tariff, for it is unnecessary. If there is a great deficiency, then immediately there is a slight raise in the income tax, and the want is provided for. If there is a surplus, there is a small reduction in the income tax, and that is remedied also. So it acts, as I have said, not only as a producer, but as a governor of revenue.

While I have the view that this is an unnecessary amendment, and that the proposition made by the Senator from Iowa [Mr. CUMMINS], the Senator from Texas [Mr. BAILEY], and the Senator from Idaho [Mr. BORAH] to levy this tax would be quite sufficient, and I believe the court would now support it, yet I am not willing to lose any opportunity to give my assent to a proposition so eminently just. If the people of this country can not pay, out of their surplus, out of the superabundance of their revenue, then why should any tax whatever be levied on anybody else? Is there any justice in levying a tax upon articles of general consumption, that must be paid by the great body of citizens everywhere, who toil for a living, and at the same time the superabundance or unspendable income of the billionaire should be spared when we know that our legislation is mostly in relation to property, concerning things, and not concerning persons?

Why, Mr. President, the laws that govern persons are so evidently obvious, they lie so completely on the surface, that, in order to preserve the organization of human society, we have left them practically unchanged. It has been the same under every code of religion and every code of laws in every part of the world, among all races of man from the beginning of time until to-day. They are unchangeable, you might say, because otherwise it would make society impossible and civilization impossible.

Mr. BAILEY. Mr. President, the Senate is entitled to know precisely the reasons which influenced me to propose these amendments; and, although I have once stated them, they will bear repetition.

Those who imagine it is easy to amend the Constitution of the United States, even to meet an almost universal public opinion, have studied the history of this country to little advantage. Outside of the first ten amendments, which may be regarded as in the nature of a bill of rights, and were a part almost of the adoption of the Constitution itself, there have been but five amendments; and not one of them adopted to meet an economic or a financial condition.

The eleventh amendment was adopted when the State of Georgia was on the point of resisting the decree of the Supreme Court of the United States; and to prevent the collision, if not then, at some future time, between state and federal authorities, the eleventh amendment, which forbids the federal courts to entertain jurisdiction over a State, was adopted.

The twelfth amendment grew out of the famous presidential election when Aaron Burr and Thomas Jefferson received the same number of votes in the electoral college, thus throwing the election into Congress and prolonging it through a period of dangerous anxiety. The Constitution, as it stood at that time, provided that the candidate receiving the highest number of electoral votes should be the President and the candidate receiving the next highest number should be the Vice-President. In the election of 1800 the Federalists took the precaution of giving a different vote to their candidates for President and Vice-President, because in the public mind the candidates were distinct, though not in the law—there were no candidates for President and Vice-President then as now—but the Democratic electors, then called Republicans, omitted that precaution, and when the electoral votes were counted Jefferson and Burr had precisely the same number. Thus two candidates having received a majority, but having exactly the same number of votes, the election was thrown into the House of Representatives, where it was pending for several weeks. Immediately the country perceived the necessity of an amendment to the Constitution, and the twelfth amendment was adopted, providing against such contingencies as had arisen in that case. Nobody in the United States ever thought of Aaron Burr being elected President over Thomas Jefferson in 1800. Every elector who cast his vote for both of them intended that Jefferson should be the President and Burr should be the Vice-President, but the result of the election disclosed such a vulnerable point in the Constitution that they promptly amended it.

From 1804—that was the date when the twelfth amendment was proclaimed as adopted by three-fourths of the States—until the civil war there was no other amendment adopted, and then three amendments grew out of that unhappy conflict. The thirteenth amendment abolished slavery; the fourteenth amendment undertook to secure to the lately enfranchised race the protection of the Federal Government, and yet that amendment and its adoption has become a scandal in the constitutional history of the United States, some States adopting it and then rejecting it, and others rejecting it and afterwards adopting it. The same thing happened in the case of the fifteenth amendment.

Now, Mr. President, if, under the stress and passions of that warlike time, constitutional amendments designed to secure what the majority considered the fruits of a great victory were subjected to such perilous passage, it can not be doubted that this proposed amendment may encounter a similar experience.

Mr. CRAWFORD. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from South Dakota?

Mr. BAILEY. I do.

Mr. CRAWFORD. Does the Senator recall an instance where a resolution proposing an amendment passed both houses of the Congress of the United States and was submitted to the States for approval that failed to receive a ratification from the necessary number?

Mr. BAILEY. Oh, yes; there were 2 out of the first 12 submitted that were rejected. But, Mr. President, whether they were rejected or not, I have been reciting to the Senate the almost insuperable difficulty of adopting the last two constitutional amendments growing out of the war.

Whether those amendments are valid or not—and I myself do not believe that either of them ever constitutionally became a part of the Constitution of the United States, but after the acceptance of them for all these years, after general acquiescence in them, that is a closed question, and I do not want to see it opened—I would put this to the judgment and to the experience of Senators: Suppose that an amendment authorizing the levy of a tax on incomes had been adopted in the same way as the amendments securing and making permanent the results of the war; does anybody doubt what would have happened? I do not. I do not doubt that we would long ago have had a judgment upon the legality of their adoption; nor do I doubt that it would have been adverse to the legality of their adoption.

Mr. President, if, instead of submitting this amendment to the legislatures, that may act and react, and go forward and recede, we submit it to a convention in every State, then every member of that convention will be selected solely with reference to this single question; he will be compelled to stand in the presence of the people whose suffrage he seeks and declare, upon his honor as a man and as a citizen, whether or not he favors this amendment. No man will be permitted to offer himself as a candidate for the convention in any State without he is compelled to declare his position; and, having declared it, no man will dare to go to that convention and cast a vote as a delegate to it differing from what he professed his intention to do when he was a candidate for it. It will be as nearly as possible a submission of the question to a direct vote of the people.

Not only, Mr. President, do we thus insure an approach to a direct vote of the people on the amendment, but we likewise relieve the States themselves from the mistake of choosing legis-

lators in the coming election with reference to federal rather than with reference to local questions. I can not myself conceive a much more unfortunate circumstance than to find it necessary to elecf every legislator in this Republic with reference to what he will or will not do in this single case, ignoring the multitude of things which he must do in his capacity as a representative of the people.

Mr. JONES. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Washington?

Mr. BAILEY. I do.

Mr. JONES. I should like to ask the Senator to indicate what authority would call the convention—the legislature of the State or the governor?

Mr. BAILEY. The legislature of the State would be compelled to call the convention. They would be compelled to provide for the election of delegates, and each legislature may provide for the election of delegates in precisely the same way and under precisely the same form as they now choose members of the legislature. A State that has a primary system of nominating men for the legislature could, and doubtless would, adopt a primary system of nominating delegates to the conventions, and thus the legislative authority of the State would determine in the State's own way—and they have a right to so determine it—the manner of choosing their delegates. If the State of Nebraska sees fit to nominate its delegates under a direct primary, they have the right to do that; but if the State of Rhode Island does not choose to pursue that policy, she has the right to pursue her own way without reference to Nebraska's policy.

Mr. JONES. I did not ask the question in a controversial way.

Mr. BAILEY. I understand that.

Mr. JONES. I wanted information of the Senator.

Mr. BAILEY. I feel sure that the conventions can only be called by the legislatures of the States.

Mr. JONES. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas further yield to the Senator from Washington?

Mr. BAILEY. Certainly.

Mr. JONES. Would not the opposition to an income tax, to which the Senator has referred, also act in the legislatures and cause them to endeavor to prevent the calling of conventions by the legislatures?

Mr. BAILEY. Undoubtedly, Mr. President, you can not escape the influence of the opposition to an income tax; and I do not seek to escape it. I only seek to challenge it to a fair combat in an open field. If a man is opposed to an income tax, I would not deprive him of the right to vote against it, and I would despise him if in his heart he was opposed to it and for any consideration, personal or political, voted for it. This is a country where every freeman's ballot ought to express a freeman's will. I am not trying to escape the influences that are hostile to this kind of legislation. I only want those influences to have the manliness and courage to stand out in the open and fight it out. I want to see that it is impossible for men seeking an election to a legislative body under one pretense or under many pretenses to reach a legislative chamber and then say they have changed their minds. I do not want some governor to send some special message to change the minds of members of the legislature as the President has changed the minds of some Senators. I do not say that in any offensive way. I can understand how a Republican wants to cooperate with a Republican administration. That is not strange to me. I have no criticism to offer on it; but on this question, which affects the fundamental law of the land, I want the adoption or rejection of it free from every influence except the consideration of its own merit, and the only way to absolutely insure that result, in my judgment, is to have it passed upon by a body selected only with reference to it.

Mr. NEWLANDS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Nevada?

Mr. BAILEY. I do.

Mr. NEWLANDS. I wish to ask the Senator whether there is not an additional objection to ratification by the legislatures in the fact that in many States of the Union the higher body, usually called the "senate," I believe, serves for two sessions and the lower body serves only for one? The Senator will recall that the Senator from Nebraska stated that the question of the income tax would be an issue before the people at the coming election, and that the legislators would receive their instructions; but such instructions would not apply, or might not, at all events, be accepted by the hold-over members of the higher body of the legislature.

Mr. BAILEY. Mr. President, that is a very pertinent and very important suggestion, and I would attempt to elaborate it, but the clock admonishes me that the hour has almost arrived for the vote to be taken, and of course I recognize the right of the Senator from Nebraska [Mr. BROWN] to conclude what is to be said on the subject.

Mr. BROWN. Mr. President, I do not care to occupy any of the time of the Senate in further discussion, except to call attention to this one situation. The convention method of ratification is supported now by Senators because it would be easier, they think, I take it, to get the ratification through a state convention than through the legislature. I suppose that is the reason, because they are all, as I understand, in favor of amending the Constitution along this proposed line.

Mr. BAILEY. While I think it would be easier, that does not exactly or precisely state my view. If the people of the United States are opposed to this amendment, it ought not to be adopted; but I think the convention method will insure a more absolutely accurate expression of public will, because of the fact that it will be selected with reference to that question, and that question alone.

Now, Mr. President, with the permission of the Senator, I want to add that a number of Senators have suggested to me that the question of expense might be an important one, and therefore I desire to say that if the amendment I propose should be adopted and we should refer this joint resolution to conventions, instead of to the legislatures, I shall follow it with a resolution providing, out of the General Treasury, for the expense of holding the conventions in every State.

Mr. McCUMBER. Mr. President, with the permission of the Senator in charge of the matter, I should like to ask the Senator from Texas a question.

Mr. BAILEY. Certainly.

Mr. BROWN. I yield.

Mr. McCUMBER. If I correctly understand the Senator from Texas, he admits that the legislature of the State would have to call the convention.

Mr. BAILEY. I think that is true, Mr. President.

Mr. McCUMBER. And there is no power to compel the legislature to call the convention if the legislature refuses to do so.

Mr. BAILEY. Nor would there be any power to compel the legislature to vote on the question if it did not choose to do so.

Mr. McCUMBER. Right there is where we can probably meet. One member of a legislature can compel the legislature to vote for or against an amendment.

Mr. BAILEY. Oh, no; it would have to be done by a quorum.

Mr. McCUMBER. Well, he can get it before the legislature; but one member of a legislature, or less than a majority of each house, could not compel the calling of a convention.

Mr. BAILEY. He would have precisely the same power in one as in the other. He could do just as much toward forcing the call of a convention as he could toward forcing a vote in the legislature.

Mr. McCUMBER. Admitting that, again, if the legislature were composed of men who would naturally be against the amendment, would it not be more convenient and more easy for them to avoid the calling of a convention than it would to meet the matter directly?

Mr. BAILEY. It would not be any more easy to do so than it would be to reject the resolution if a majority were opposed to it. I know there are a lot of cowards in politics, but I am not assuming that they are a majority anywhere. I am proceeding upon the theory that if a majority of the members of any legislature in the Union are opposed to this amendment, they will vote against it.

Mr. McCUMBER. The point I want to make to the Senator is that, in either event, we will have to depend upon the legislature.

Mr. BAILEY. Undoubtedly.

Mr. McCUMBER. We will have to depend upon the same legislature to call the convention that we will have to depend upon to vote directly upon the amendment.

Mr. BAILEY. But the difference is——

Mr. McCUMBER. Just a moment. If there is power enough on the part of the friends of the amendment to call the convention, undoubtedly there would be power enough to get it to pass the amendment.

Mr. BAILEY. Let me put the matter in this way: Suppose the Senator were a member of a state legislature, and this constitutional amendment is duly submitted to be passed upon by a constitutional convention, would the Senator refuse to vote for a law calling that constitutional convention? I think not.

Mr. McCUMBER. Neither would I refuse to vote for a law ratifying the amendment.

Mr. BAILEY. But suppose the Senator were opposed to it? I will not state the Senator's case, but will state my own. If I were a member of the Texas legislature, and this amendment were submitted for ratification by the legislature, and I were opposed to it, I should vote against it; and they might bring Gatling guns and train them on the capitol, but I would still vote against it if I were honestly opposed to it. But, sir, if the amendment were submitted to the ratification or disposition of a convention, I should feel in honor bound, both as a member of the legislature and as a citizen, to afford to the people of Texas an opportunity to pass in a lawful and an orderly way upon the question. I should therefore vote without the slightest hesitation in favor of calling a convention to pass upon the question, notwithstanding the fact that I intended to offer myself as a candidate for that convention for the purpose of voting against the ratification of the amendment.

So I do not hesitate to say that there is a vast difference between a legislator who might vote against the ratification of the amendment if submitted to the legislature and one who would vote against submitting it to a convention in pursuance of the resolution of Congress.

Mr. HEYBURN. May I make a suggestion to the Senator from Texas?

The VICE-PRESIDENT. Does the Senator from Nebraska yield?

Mr. BROWN. I do.

Mr. HEYBURN. As I read Article V of the Constitution, which is the article providing for amendments, a state legislature has nothing to do with the question whether or not an amendment shall be submitted to a convention. Congress is to say whether it shall be passed upon by the legislature or by a convention, and the legislature can not refer it to a convention. Congress is clothed with the authority to adopt that course if it sees fit.

Mr. BAILEY. I do not understand the Senator from North Dakota to suggest that the legislature might refer it to a convention. I understood his question to be whether the legislature might not refuse to call a convention.

Mr. McCUMBER. That is correct.

Mr. HEYBURN. Mr. President, I think that hardly covers it.

Mr. BEVERIDGE. How could the convention be called if the legislature did not call it?

Mr. HEYBURN. Congress provides the manner of calling it.

Mr. McCUMBER. Congress does not call the convention.

Mr. BAILEY. Unless the Senator from Nebraska is entirely willing, I feel that I must——

Mr. HEYBURN. I am not going to occupy a quarter of a minute; but this is an important point. Article V does not vest power in the legislature of a State to call a convention. It says that Congress may determine whether a convention shall decide this question or whether the legislature shall decide it. But it is just as probable that the governor would call the convention if the act of Congress authorized him to do it.

Mr. BAILEY. The trouble with that is that it would be necessary to provide for the manner in which members should be elected, and the governor could hardly do that.

Mr. BROWN. That would require a session of the legislature.

Mr. HEYBURN. I did not desire to consume this time, as other Senators may desire to make suggestions. I merely gave out the suggestion because it seemed naturally to grow out of the language of Article V.

Mr. BROWN. Now, Mr. President, just a word.

Mr. BAILEY. Will the Senator permit me?

Mr. BROWN. Just a word, and I will yield the floor. This discussion has resulted in an agreement by all parties that the legislature must act, whether we follow the plan suggested by the resolution or whether we provide for ratification by a convention. With the proposed plan, which is the usual and customary plan, the legislature is the only obstacle in the way.

Under the proposal of the Senator from Texas to refer the matter to a convention, we not only have the legislature still in the way, but we have the convention in the way. In other words, you have to have a legislature that is friendly enough to the proposition to pass a law that will be fair enough to allow the people to select delegates to a convention; and then you have to wait until the adjournment of the legislature, and until a convention is called, before you get any action either for or against the amendment. Will some Senator tell me the need of that postponement? In the West we can trust to the legislatures of the States. This is the usual and customary way. Let us follow it if we are in favor of the amendment. If we are not, let us present all the difficulties and offer all the complications that an untried experiment may suggest.

Mr. BORAH. Mr. President——

Mr. CLAPP. Mr. President——

The VICE-PRESIDENT. Does the Senator yield to the Senator from Idaho or to the Senator from Minnesota?

Mr. CLAPP. Just one question.

The VICE-PRESIDENT. Does the Senator yield; and if so, to whom?

Mr. BROWN. I yield to the Senator from Minnesota.

Mr. CLAPP. I hardly think it is just the proper thing for a Senator to say that those who favor this amendment will vote according to his view and those who are opposed to it will vote another way.

Mr. BROWN. O Mr. President, I did not say that, or intend to say that, at all.

Mr. CLAPP. I thought the Senator did not intend to say it.

Mr. BEVERIDGE. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nebraska now yield to the Senator from Idaho?

Mr. BROWN. I yield.

Mr. BORAH. Mr. President, I do not know upon what principle the Senator from Nebraska suggests that in case the legislature refuses to call a convention the people can not of themselves come together and ratify the amendment.

Mr. BROWN. I have not said that; but how are they going to select each other as delegates except as the state legislature may provide? How are they going to name their delegates? Who is going to pass on their credentials? Why go out in a field of that kind, that no mortal man has ever suggested before, when we have the plain method proposed in the Constitution and followed in the joint resolution now pending?

Mr. BACON. I will suggest that the State of California came into the Union under a constitution framed by a convention called exactly that way.

Mr. BROWN. That is a very different proposition.

Mr. BORAH. That is the basic principle of a republican form of government, and there is no authority in law or elsewhere for saying that the people can not come together unless the legislature says they may do so.

Mr. BROWN. Is there anything unrepublican about following the method the Constitution says we can follow and referring to the legislatures of the country the question whether or not the Federal Constitution shall be amended? This is the first time I have heard it suggested that it is unrepublican to submit an amendment to a state legislature for ratification, when the fact remains that every amendment we have was adopted in that very way.

Mr. BEVERIDGE and Mr. GORE addressed the Chair.

The VICE-PRESIDENT. To whom does the Senator from Nebraska yield?

Mr. BROWN. I yield to the Senator from Indiana.

Mr. BEVERIDGE. Referring to the remark of the Senator from Minnesota, I understood, and wish to now ask the Senator from Nebraska if that is a correct understanding, that under the amendment of the Senator from Texas, proposing to submit this matter to conventions, two processes are involved instead of one, as is the case with the proposition of the Senator from Nebraska, and that of those two processes one is precisely the same that is now objected to?

It is said that certain influences may prevent the legislature from acting favorably. But, as the Senator from Mississippi pointed out a moment ago, those same influences would certainly be equally potent in preventing the legislature from calling a convention, in addition to which they would have the other arguments about economy, and so forth, that are used with such effect. Therefore, if I understand the position of the Senator from Nebraska, which seems to me to be essentially sound, and particularly and uncommonly clear, it is this: In submitting this amendment, which we all hope to have adopted—and I think I can, without any improper assumption, predict that at least in one State that I know of the legislature will adopt it—under the proposition of the Senator from Nebraska [Mr. BROWN] we only have one process to go through with, one danger to face, one difficulty to overcome, whereas, under the convention proposition of the Senator from Texas [Mr. BAILEY] we have two dangers to overcome and two difficulties to surmount——

Mr. BORAH. Mr. President——

Mr. BEVERIDGE. Wait a minute—and that both propositions involve precisely the same matter—that is, the legislature—of which complaint is made. In other words, to boil it down to a sentence, the amendment of the Senator from Texas [Mr. BAILEY] makes it doubly difficult to get this amendment ratified, because two processes instead of one process must be gone through; and of these two processes one process is untried.

The VICE-PRESIDENT. Will the Senator from Nebraska yield in order to permit the Senator from Idaho to make an inquiry of the Senator from Indiana?

Mr. BROWN. Yes.

Mr. BORAH. The two processes the Senator refers to are the legislature and the convention?

Mr. BEVERIDGE. Yes.

Mr. BORAH. Upon what theory does the Senator from Indiana insist that we must necessarily have the legislature?

Mr. BEVERIDGE. Until the Senator arose a moment ago, I had not heard any person suggest that the machinery for the calling of a convention would simply create itself out of air—that the people would simply get together somehow or other, without order, authority, or law. And this, too, in so solemn a proceeding as the amending of the Constitution of the Nation. If the people got together, certainly all the people would not get together. Under what authority of law would they get together? You can not assume——

Mr. BORAH. But——

Mr. BEVERIDGE. Pardon me; the Senator asked me a question. You can not assume that all of the people of the State are going to be for this action. If not all, then by what method will you get them together? If all, still by what method? Are they to have a general meeting? If so, who will call it? Who will be delegates? Who would determine the credentials? Where would it meet? Would we have a town meeting in every town, resolving that on such and such a day the people would select certain delegates? How would they be selected?

Mr. BORAH. Mr. President——

Mr. BEVERIDGE. And that, too, in so grave a thing as an amendment to the Constitution of the United States! I have never in my life been more heartily for a thing than I am for this amendment to the Constitution, giving to the Congress of the United States the power that it ought to have of levying this tax in case of an emergency. This whole business involves a much deeper question than any of those taxes—it involves the question of orderly liberty; and, to my mind, orderly liberty is the largest question in this whole extraordinary tax matter.

Why should we adopt the convention method that has been suggested here, with the result of crossing two streams when, under the method of the Senator from Nebraska, which is the usual one, the historic one, and the one laid down in the Constitution itself as a preference, only one stream must be crossed? If you take the former course, you multiply by 100 per cent the difficulties in the way of getting this amendment to the Constitution of the United States giving the Government the power it ought to have.

Mr. GORE. Mr. President——

The VICE-PRESIDENT. Does the Senator from Nebraska yield to the Senator from Oklahoma?

Mr. BROWN. I yield to the Senator from Oklahoma.

Mr. GORE. Mr. President, I wish to propound a question to the Senator from Idaho and the Senator from Texas. My vote may possibly depend upon their answer.

In a general way I prefer the convention plan, because in the selection of delegates to a convention this would be the only issue, dissociated from a hundred legislative questions—the selection of United States Senators, and other extraneous matters. But, as I understand, this amendment will pend indefinitely, and can be made the issue in the selection of a dozen legislatures until one is finally chosen that will ratify the amendment. If one convention should be called and should act adversely upon the amendment, is it the opinion of the Senators I have named that the legislature could properly summon another convention to pass on the same issue?

The VICE-PRESIDENT. The hour of 1 o'clock has arrived. The question is on agreeing to the resolution offered by the Senator from Nebraska [Mr. BROWN].

Mr. BAILEY. I should like to have——

The VICE-PRESIDENT. No further debate is in order, under the order of the Senate. To the joint resolution the Senator from Kansas [Mr. BRISTOW] first suggested an amendment, upon which the Senator from Rhode Island [Mr. ALDRICH] raised the question that the amendment was not in order under the special rule adopted by the Senate. The Chair sustains the point of order, and holds that the amendment is not in order under the agreement. The question now is on the first amendment offered by the Senator from Texas [Mr. BAILEY].

Mr. LA FOLLETTE. Will the Chair indulge the Senate by having reported the order under which we are now proceeding?

The VICE-PRESIDENT. Without objection, the Secretary will report the order.

Mr. BEVERIDGE. Mr. President, I should have asked to have it reported myself, but, as a matter of fact, under the agreement——

The VICE-PRESIDENT. Is there objection?

Mr. BEVERIDGE. I have no objection myself; but we must have some rules of procedure.

The VICE-PRESIDENT. The Secretary will report the order.

The Secretary read as follows:

It is agreed by unanimous consent that at 1 o'clock p. m., Monday, July 5, 1909, the Senate shall proceed to vote, without debate, upon Senate joint resolution No. 40, "Proposing an amendment to the Constitution of the United States," and upon all amendments pending or to be propcsed thereto.

The VICE-PRESIDENT. The Secretary will report the first amendment offered by the Senator from Texas [Mr. BAILEY].

Mr. BRISTOW. May I ask the ruling upon my amendment?

Mr. ALDRICH and others. Let us have the regular order.

The VICE-PRESIDENT. The Chair has ruled that the amendment is not in order under the rule the Senate has provided for this procedure, to wit: The Senate has determined by its action that it will consider the amendment offered by the Senator from Nebraska [Mr. BROWN] relating to amending the Constitution and referring to the income tax. The amendment of the Senator from Kansas relates to an entirely different matter.

Mr. STONE. No; the question is——

Several SENATORS. Regular order!

The VICE-PRESIDENT. The Chair has ruled, and unless there is——

Mr. STONE. I rise to a question of order.

The VICE-PRESIDENT. The Senator will state it.

Mr. STONE. The Chair stated that the question was upon the resolution offered by the Senator from Nebraska, under the order just read.

The VICE-PRESIDENT. And the amendments thereto which are in order.

Mr. STONE. But the order just read says that we shall vote upon resolution No. 40, which is the resolution proposed by the Finance Committee.

Mr. ALDRICH. That is a technical matter.

The VICE-PRESIDENT. If the Chair made a misstatement in that regard everyone understands what is meant. Senate joint resolution No. 40 is the one the Senate is now considering. The Secretary will report the first amendment offered by the Senator from Texas.

The SECRETARY. In line 5, strike out the word "legislatures" and insert the word "conventions." In line 9, after the word "incomes" and the comma, insert "and may grade the same" and a comma.

Mr. McCUMBER. I should like to have those matters divided so that we can vote on them separately.

The VICE-PRESIDENT. Without objection, that will be done. The Senator from Texas, as the Chair understands, asks for the yeas and nays upon each amendment.

Mr. BAILEY. Yes.

The yeas and nays were ordered.

The VICE-PRESIDENT. The question is on the first amendment of the Senator from Texas.

Mr. CULBERSON. Mr. President, I have been absent from the Senate, and I ask that the first amendment be reported.

The VICE-PRESIDENT. Without objection, the Secretary will report the amendment.

The SECRETARY. In Senate joint resolution No. 40, line 5, strike out the word "legislatures" and insert the word "conventions."

The VICE-PRESIDENT. The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. DILLINGHAM (when his name was called). I have a general pair with the senior Senator from South Carolina [Mr. TILLMAN], who is absent. I transfer that to the senior Senator from Maine [Mr. HALE], and vote "nay."

Mr. GUGGENHEIM (when his name was called). I have a general pair with the senior Senator from Kentucky [Mr. PAYNTER], who is detained by illness. I transfer that to the senior Senator from Washington [Mr. PILES], and vote "nay."

Mr. McLAURIN (when his name was called). I am paired with the junior Senator from Michigan [Mr. SMITH]. If he were present, I should vote "yea."

Mr. JONES (when Mr. PILES's name was called). My colleague is absent from the city on important business. If he were present, I am not prepared to say how he would vote on this amendment.

Mr. TAYLOR (when his name was called). I am paired with the junior Senator from Connecticut [Mr. BRANDEGEE] on all questions except this one. I vote "yea."

The roll call was concluded.

Mr. BACON. I desire to announce that my colleague [Mr. CLAY] is necessarily absent. If he were present, he would vote "yea." He is paired with the senior Senator from Massachusetts [Mr. LODGE], who, I presume, if present, would vote "nay."

Mr. BANKHEAD. I am paired with the junior Senator from Illinois [Mr. LORIMER]. I transfer that pair to the junior Senator from Maryland [Mr. SMITH], and vote "yea."

Mr. SCOTT. My colleague [Mr. ELKINS] is unavoidably detained from the city to-day. I am not prepared to say how he would vote if he were here.

Mr. BAILEY. I am paired with the Senator from West Virginia [Mr. ELKINS], and if it would make any difference in the result of this vote I should of course feel compelled to withdraw my vote. But as it does not make any difference in the result, I shall let my vote stand.

Mr. HEYBURN. I should like to make a parliamentary inquiry.

The VICE-PRESIDENT. The Senator will state it.

Mr. HEYBURN. Should pairs count on a vote of this kind, which requires a majority of two-thirds? It seems to me this is an exception to the rule.

The VICE-PRESIDENT. The question of pairs is not for the Chair to determine.

Mr. BACON. A majority of two-thirds is not required in the case of an amendment.

Mr. MONEY. I believe it has been ruled repeatedly that in the intermediate stages of an amendment to the Constitution only a majority is requisite.

The VICE-PRESIDENT. The Chair thinks that is so, but that was not the question that was asked of the Chair.

Mr. GALLINGER. Let us have the regular order.

The VICE-PRESIDENT. The question asked of the Chair was whether pairs should count. The Chair understands it is not for the Chair to determine whether a pair shall or shall not stand.

Mr. MONEY. The Chair is right about that. It is a matter of agreement between two Senators whether the pair stands or not; and that agreement is not liable to be reviewed by any other party.

The result was announced—yeas 30, nays 46—as follows:

YEAS—30.

Bacon	Cummins	Jones	Shively
Bailey	Davis	La Follette	Simmons
Bankhead	Fletcher	McEnery	Smith, S. C.
Borah	Foster	Money	Stone
Bristow	Frazier	Newlands	Taliaferro
Chamberlain	Gore	Overman	Taylor
Clapp	Hughes	Owen	
Culberson	Johnston, Ala.	Rayner	

NAYS—46.

Aldrich	Crane	Gallinger	Penrose
Beveridge	Crawford	Gamble	Perkins
Bourne	Cullom	Guggenheim	Root
Bradley	Curtis	Heyburn	Scott
Briggs	Daniel	Johnson, N. Dak.	Smoot
Brown	Depew	Kean	Stephenson
Burkett	Dick	McCumber	Sutherland
Burnham	Dillingham	Martin	Warner
Burrows	Dixon	Nelson	Warren
Burton	du Pont	Nixon	Wetmore
Carter	Flint	Oliver	
Clark, Wyo.	Frye	Page	

NOT VOTING—16.

Brandegee	Dolliver	Lorimer	Richardson
Bulkeley	Elkins	McLaurin	Smith, Md.
Clarke, Ark.	Hale	Paynter	Smith, Mich.
Clay	Lodge	Piles	Tillman

So Mr. BAILEY's first amendment was rejected.

The VICE-PRESIDENT. The Secretary will report the next amendment offered by the Senator from Texas.

The SECRETARY. In line 9, after the word "incomes" and the comma, insert the words "and may grade the same" and a comma.

The VICE-PRESIDENT. The question is on agreeing to that amendment.

Mr. BAILEY. Mr. President, I am satisfied that this amendment will be voted down; and voting it down would warrant the Supreme Court in hereafter saying that a proposition to authorize Congress to levy a graduated income tax was rejected. And although I do not believe it would be rejected upon any except a rather blind political reason——

Mr. HEYBURN. I call for the regular order.

Mr. BAILEY. I do not intend to allow that to occur, and I withdraw the amendment.

The VICE-PRESIDENT. The Senator can not withdraw his amendment except by unanimous consent after the yeas and nays have been ordered.

Mr. BAILEY. I did not know the yeas and nays had been ordered on that amendment.

The VICE-PRESIDENT. They have.

Mr. BAILEY. I think not.

Mr. ALDRICH. I think there will be no objection to that course, Mr. President.

The VICE-PRESIDENT. The Chair so understood. However, it is very easy to solve the difficulty. Is there objection to the Senator from Texas withdrawing his amendment? The Chair hears none. The Senator from Texas withdraws his amendment.

The question now is upon the amendment offered by the Senator from Mississippi [Mr. MCLAURIN], which the Secretary will again report.

The SECRETARY. Amend the joint resolution by striking out all after line 7 and inserting the following:

The words "and direct taxes," in clause 3, section 2, Article I, and the words "or other direct," in clause 4, section 9, Article I, of the Constitution of the United States are hereby stricken out.

The VICE-PRESIDENT. The question is on agreeing to the amendment.

The amendment was rejected.

Mr. BRISTOW. I desire to offer as a substitute for the joint resolution the matter which I send to the desk.

The VICE-PRESIDENT. The Senator from Kansas offers the following substitute for the joint resolution.

The SECRETARY. Joint resolution offered by Mr. BRISTOW as a substitute for Senate joint resolution No. 39, Sixty-first Congress, first session.

Mr. ALDRICH. I ask that the substitute be read, subject to objection.

The Secretary read as follows:

Joint resolution offered by Mr. BRISTOW as a substitute for Senate joint resolution No. 39, Sixty-first Congress, first session.

Joint resolution to amend the Constitution.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following section be submitted to the legislatures of the several States, which, when ratified by the legislatures of three-fourths of the States, shall be valid and binding as a part of the Constitution of the United States:

"The Congress shall have power to lay and collect direct taxes on incomes without apportionment among the several States according to population."

That section 3 of Article I be so amended that the same shall be as follows:

"ARTICLE I.

"SEC. 3. That the Senate of the United States shall be composed of two Senators from each State, who shall be chosen by a direct vote of the people of the several States, for six years; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the state legislatures; and each Senator shall have one vote."

Mr. ALDRICH. I make the same point of order in relation to that amendment.

The VICE-PRESIDENT. The joint resolution is not offered as an amendment to anything that is pending.

Mr. ALDRICH. It is not offered?

The VICE-PRESIDENT. It is not offered as an amendment to the pending joint resolution.

Mr. ALDRICH. Then, I object to its presentation.

The VICE-PRESIDENT. It is not in order.

Mr. BRISTOW. I offer it as a substitute for the pending joint resolution.

The VICE-PRESIDENT. But the joint resolution expressly says that it is offered as a substitute for joint resolution No. 39.

Mr. BRISTOW. This is No. 39?

The VICE-PRESIDENT. It is not.

Mr. ALDRICH and Mr. GALLINGER. Regular order!

Mr. BEVERIDGE. Let us have the regular order.

Mr. BRISTOW. May I ask what is the number of the pending joint resolution?

The VICE-PRESIDENT. No. 40.

Mr. BRISTOW. I ask to change the substitute to No. 40 instead of No. 39.

The VICE-PRESIDENT. The change will be made.

Mr. ALDRICH. I make the point of order against it.

Mr. BRISTOW. What is the point of order?

Mr. ALDRICH. I make the point of order that it covers matters not included in the agreement, and that under that agreement——

The VICE-PRESIDENT. The Chair sustains the point of order.

Mr. BRISTOW. I appeal from the decision of the Chair.

The VICE-PRESIDENT. The Senator from Kansas appeals from the decision of the Chair. The question is, Shall the decision of the Chair stand as the judgment of the Senate? [Putting the question.] The ayes appear to have it. The ayes have it. The decision of the Chair is sustained.

If there be no further amendment to be offered to the joint resolution, it will be reported to the Senate.

The joint resolution was reported to the Senate without amendment, ordered to be engrossed for a third reading, and was read the third time.

The VICE-PRESIDENT. The question is, Shall the joint resolution pass? The Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. BANKHEAD (when his name was called). I am paired with the junior Senator from Illinois [Mr. LORIMER]. I transfer that pair to the junior Senator from Maryland [Mr. SMITH], and vote "yea."

Mr. BACON (when Mr. CLAY's name was called). I again announce that my colleague [Mr. CLAY] is necessarily absent. If he were present, he would vote "yea." He is paired with the senior Senator from Massachusetts [Mr. LODGE], who I presume would also vote "yea," if present.

Mr. DILLINGHAM (when his name was called). I have a general pair with the senior Senator from South Carolina [Mr. TILLMAN].

Mr. BAILEY. If the Senator from South Carolina [Mr. TILLMAN] were present, he would vote "yea." If the Senator from Vermont votes the same way, he is at liberty to vote.

Mr. DILLINGHAM. Being thus released, I vote "yea."

Mr. SCOTT (when Mr. ELKINS's name was called). I repeat the statement I made a few moments ago. My colleague [Mr. ELKINS] is absent from the city.

Mr. GUGGENHEIM (when his name was called). I make the same announcement I did on the previous vote, and vote "yea."

Mr. JONES (when Mr. PILES's name was called). My colleague [Mr. PILES] is necessarily absent. If he were present, he would vote "yea."

Mr. DU PONT (when Mr. RICHARDSON's name was called). My colleague [Mr. RICHARDSON] is absent from the city. If he were present, he would vote "yea."

The roll call was concluded.

Mr. BAILEY. The Senator from Kentucky [Mr. PAYNTER] is sick and detained from the Senate. If he were present, he would vote "yea." The Senator from Colorado [Mr. GUGGENHEIM] need not therefore transfer his pair unless it suits him.

Mr. DAVIS. I desire to announce that my colleague [Mr. CLARKE of Arkansas] is necessarily detained on account of the critical illness of his son. If he were present, he would vote "yea."

Mr. BURROWS. A dispatch just received from my colleague [Mr. SMITH of Michigan] states that he is unavoidably absent, and if present he would vote for the joint resolution.

The result was announced—yeas 77, nays 0, as follows:

YEAS—77.

Aldrich	Crawford	Guggenheim	Penrose
Bacon	Culberson	Heyburn	Perkins
Bailey	Cullom	Hughes	Rayner
Bankhead	Cummins	Johnson, N. Dak.	Root
Beveridge	Curtis	Johnston, Ala.	Scott
Borah	Daniel	Jones	Shively
Bourne	Davis	Kean	Simmons
Bradley	Depew	La Follette	Smith, S. C.
Briggs	Dick	McCumber	Smoot
Bristow	Dillingham	McEnery	Stephenson
Brown	Dixon	McLaurin	Stone
Burkett	du Pont	Martin	Sutherland
Burnham	Fletcher	Money	Taliaferro
Burrows	Flint	Nelson	Taylor
Burton	Foster	Newlands	Warner
Carter	Frazier	Nixon	Warren
Chamberlain	Frye	Oliver	Wetmore
Clapp	Gallinger	Overman	
Clark, Wyo.	Gamble	Owen	
Crane	Gore	Page	

NOT VOTING—15.

Brandegee	Dolliver	Lorimer	Smith, Md.
Bulkeley	Elkins	Paynter	Smith, Mich.
Clarke, Ark.	Hale	Piles	Tillman
Clay	Lodge	Richardson	

So the joint resolution was passed, two-thirds of the Senators present having voted in favor thereof.

CLAIM OF MARCUS RAMADANOVITCH.

The VICE-PRESIDENT laid before the Senate the following message from the President of the United States, which was read, and on motion of Mr. CULLOM was, with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed (H. Doc. No. 81):

To the Senate and House of Representatives:

I transmit herewith the report of the Secretary of State, with accompanying papers, relative to the claim of Marcus Ramadanovitch, alias Radich, a Montenegrin subject, for property stated to have been appropriated by the United States military authorities in Texas during the month of October, 1865.

In view of the statement by the Secretary of State that the claim appears to be a meritorious one, I recommend that an appropriation be made to pay it.

WM. H. TAFT.

THE WHITE HOUSE, *July 5, 1909.*

THE TARIFF.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 1438) to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes.

Mr. ALDRICH. I wish to modify the committee amendment which is now pending. On page 20, line 9, after the word "merchandise," I move to insert "for which no foreign value is established and."

The amendment to the amendment was read by the Secretary.

Mr. BACON. I dislike very much to delay the Senate, but in the confusion it is impossible to get the purport of the amendment. I have not the amendment before me, but I understand it relates to the question of appraisement, as to whether or not the appraisement shall be the valuation in the foreign country or in this country.

Mr. ALDRICH. Yes. This is an amendment suggested by the Merchants' Association of New York.

Mr. BACON. I suppose it is the same one that was spoken of in the papers this morning.

Mr. ALDRICH. I do not know what was spoken of in the papers.

Mr. BACON. I do not wish the Senator to be committed to that, but it is the only information I have about it.

Mr. ALDRICH. It is an amendment suggested by the importers of New York as a proper amendment, and the committee have agreed to it.

The VICE-PRESIDENT. The Secretary will read the amendment as it would stand in the text, and then the Senator from Georgia will understand it clearly.

The SECRETARY. In section 11, line 8, page 20, after the word "merchandise," insert "for which no foreign market value is established and," so as to read:

The actual market value or wholesale price as defined by law of any imported merchandise for which no foreign market value is established and which is consigned for sale in the United States, or which is sold for exportation to the United States, etc.

The VICE-PRESIDENT. The question is on agreeing to the amendment to the amendment.

The amendment to the amendment was agreed to.

Mr. ALDRICH. On the same page, line 22, after the word "paid," at the end of section 11, I move to insert:

On consigned goods, or a reasonable allowance for general expenses and profits (not to exceed 8 per cent) on purchased goods.

The amendment to the amendment was agreed to.

Mr. ALDRICH. I ask that the amendment may be agreed to as an amendment.

Mr. BACON. I hope the Senator will not press that question for a moment.

Mr. ROOT. There is one slight amendment to the amendment that I should like to have made.

The VICE-PRESIDENT. The Senator from New York offers an amendment, which will be read.

The SECRETARY. In section 7, on page 14, line 19, after the word "entry," it is proposed to insert the words "by more than 5 per cent."

Mr. ALDRICH. I will not object to that amendment to the amendment.

Mr. RAYNER. Is the customs-court amendment before the Senate now?

Mr. ALDRICH. It is.

Mr. RAYNER. I want to oppose it whenever the opportunity presents itself.

Mr. BEVERIDGE. It is right here.

Mr. RAYNER. I think it is an unconstitutional amendment.

Mr. BACON. I should like to ask the Senator from Rhode Island a question. A few moments ago he asked that the amendment as amended might be agreed to. Did the Senator refer to the entire amendment?

Mr. ALDRICH. I did.

The VICE-PRESIDENT. Pending that, an amendment is offered to the amendment by the Senator from New York.

Mr. BACON. I think the amendment had better be taken up in detail.

Mr. ALDRICH. Amendments are in order. If the Senator has any amendments to offer to the amendment, they are in order.

Mr. BACON. What is the amendment of the Senator from New York?

The VICE-PRESIDENT. The Secretary will again report the amendment to the amendment.

The SECRETARY. On page 14, line 19, after the word "entry," insert "by more than 5 per cent."

The amendment to the amendment was agreed to.

Mr. ALDRICH. Now the question is on the amendment as amended.

The VICE-PRESIDENT. The question is on agreeing to the amendment as amended.

Mr. RAYNER. Mr. President, is this the customs-court amendment to be voted on?

Mr. ALDRICH. The whole amendment.

The VICE-PRESIDENT. The entire amendment.

Mr. RAYNER. I want to say a few words in opposition to it. I am opposed to the amendment upon the ground of public policy, and I am opposed to it, furthermore, because I do not think it is a valid amendment. I do not think it is a constitutional amendment, and I want to give my reasons for it. When I get the attention of the Senate on this point—when there is order in the Senate—because it is an important point, I will proceed.

The VICE-PRESIDENT. The Senate will please be in order.

Mr. RAYNER. Mr. President, I am quite sure that the Senate does not want to enact any unconstitutional legislation; and if this whole legislation is a violation of the Constitution, it is void. I have not had time to give the matter the examination that it deserves, but the impression upon my mind is that it clearly violates the Constitution of the United States. I direct the attention of the Senate to the seventh amendment of the Constitution.

Mr. BACON. I should like to inquire if the amendment has ever been read from the desk?

The PRESIDING OFFICER (Mr. KEAN in the chair). It has been read.

Mr. BACON. The full amendment?

Mr. ALDRICH. The full amendment was read when it was presented.

Mr. OVERMAN. Mr. President, I suggest the want of a quorum.

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from North Carolina?

Mr. RAYNER. Yes; I yield for that purpose.

The PRESIDING OFFICER. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Aldrich	Curtis	Hughes	Penrose
Bacon	Daniel	Johnson, N. Dak.	Perkins
Borah	Davis	Johnston, Ala.	Rayner
Bradley	Dick	Jones	Root
Bristow	Dillingham	Kean	Scott
Burkett	Dixon	La Follette	Shively
Burnham	Fletcher	McLaurin	Smoot
Burrows	Flint	Martin	Stephenson
Burton	Frye	Newlands	Warner
Carter	Gallinger	Nixon	Wetmore
Crane	Gamble	Oliver	
Crawford	Gore	Overman	
Cullom	Guggenheim	Page	

The PRESIDING OFFICER. Forty-nine Senators have answered to their names; a quorum of the Senate is present. The Senator from Maryland will proceed.

Mr. RAYNER. Mr. President, so many laws have been passed here that are wrong that I have come to the conclusion that it does not make much difference to me what my friends of the Republican party do. They can pass an unconstitutional law if they want to.

I will submit the point I make to the Senate. This proposed act appears to me to be in violation of the Constitution of the United States, unless you make some change in it. I will state it plainly. It makes the customs court a final court. There is no appeal from the ultimate judgment of this customs court, and nowhere in these proceedings does it give a jury trial. It strikes me with force that at some stage of the proceeding you must give the party the right to a jury trial. He had, under the old acts prior to the existing one, a right to a jury trial in the circuit court. You take that right away from him now, and you make this court an ultimate tribunal, and at no period in the progress of these proceedings do you give him a right to a jury trial, although conviction may indirectly result.

Not only that, but you make the certificate of your collectors in criminal proceedings prima facie evidence against him, so that he is prima facie guilty unless he proves his innocence, and you do that without having afforded him a jury trial in the first instance. Let me see whether I am right about that.

I am also opposed to it upon the ground of public policy, but if I am right about this the act should at least be perfected. There ought to be some amendment, unless the Senator from Rhode Island is willing to take the risk. If he is willing to take the risk of this enactment, I will guarantee whenever an important case comes up some lawyer of distinction in the profession will go into the circuit court of the United States and attack this act upon this ground. If the Senator from Rhode Island is willing to take the chance of this measure, without having any legal opinion to sustain him at all, I suppose it matters very little whether the act passes or not.

Mr. ALDRICH. Mr. President——

Mr. RAYNER. In just a minute.

Now, this point has not been directly passed upon. The Senator from Rhode Island stated to me—I do not suppose there is any objection to my stating it here—that some years ago when the original act was under consideration in the Senate several distinguished Senators, men of great attainments in their profession, held that you could make the judgment even of the appraisers final, and he gave me the names of the Senators. But, Mr. President, there was the right of jury trial then. The junior Senator from New York [Mr. ROOT] will state to the Senate that there was a right of jury trial in the circuit courts of the United States at that time.

Mr. ALDRICH. I do not care how many Senators the Senator cites, there never has been any jury trial in the case of appraisement for value.

Mr. RAYNER. The Senator does not understand the point I am making at all.

Mr. ALDRICH. The claimant can appeal, of course, but not on a question of appraisement.

Mr. RAYNER. I understand that fully. You can appeal on questions of law and questions of fact.

Mr. ALDRICH. I have been in the habit of listening always with great respect to the views of the Senator from Maryland as a constitutional lawyer; but he evidently has not had great practical knowledge of customs cases.

Mr. RAYNER. The Senator from Rhode Island is mistaken about that. I have tried some important customs cases. Therefore the Senator from Rhode Island makes a misstatement.

Mr. ALDRICH. Then the Senator from Maryland ought to know that a decision of the appraisers and of the Board of General Appraisers as to the value of the goods has never, in the history of this country, been submitted to a jury and can not be. It is not submitted to any court except upon questions of classification. No question of value ever goes to any court outside of the appraisers and the Board of General Appraisers. The decision of those appraisers is, and has been ever since the board was created, absolutely final.

Mr. RAYNER. Now, Mr. President, that shows that the Senator from Rhode Island does not at all comprehend the point that I am making. I am not talking about values at all. Let us take classifications—classifications involving questions of fact. There is hardly a classification question that comes under the statutes that does not involve a question of fact.

Mr. ALDRICH. Under the law as it now stands they go to the circuit court or the district court, as the case may be, on appeal. There is no testimony taken by the district court or the circuit court and no question of evidence as to the proof of the allegations. The circuit court has to remand these cases to the Board of General Appraisers for testimony.

Mr. RAYNER. I understand all that. It is almost impossible to argue this with a gentleman who is not a little more familiar with the rudimentary principles of the profession which I represent. I know all this. A case goes up on testimony; but the testimony involves questions of fact. I hope the Senator from Rhode Island will not be so impatient, and will let me proceed for about ten minutes. If I am wrong, there is no trouble about it; but I have submitted the question to a number of my colleagues here, and every one of them thinks that I am right; and I think that there is not any Member of this body who is a member of my profession who does not think I am right. Therefore I prefer to take my views upon this subject in preference to the views of the Senator from Rhode Island.

This is strictly a legal and constitutional question, and I submit the point. If I am wrong, that is the end of it; and if I am right, I am quite sure the Senator from Rhode Island does not want to have an unconstitutional law passed. Let me just

proceed, if you can. I know how these cases go from the appraisers to the circuit court. They go up on testimony; there is no doubt about that; but that testimony involves questions of fact.

I ask the junior Senator from New York [Mr. ROOT], who has had more practice under the old law—now repealed—perhaps than any man in the profession, whether or not, under the law that existed before the present law, the circuit court did not always empanel a jury when suit was brought against the collector in those cases for the purpose of determining controverted questions of fact? I should like to have the opinion of the junior Senator from New York on that point, if he is willing to give it, because I repeat he has had more practice and experience than any of us on this point. If the Senator has no objection, I should like to have his opinion, though, of course, I have no right to call on him to give it.

Mr. ROOT. Mr. President, I am not familiar with the practice under the present law, for it is now a good many years since I have been engaged in the practice at all in such cases, and I have not practiced under the present law. Under the former law the determinations of the appraising officers upon values were held to be final. In case the importer or owner of goods was not satisfied with the decision of the collector as to classification, he paid his duty under protest, and then sued to recover it back. Suits which were brought to recover alleged excesses of duty because of errors in classification were considered as jury cases, were put upon the common-law calendar and tried by a jury.

Mr. RAYNER. That settles it. No one except the Senator from Rhode Island ever thought otherwise.

Mr. ALDRICH. If the Senator will listen to me for a moment—perhaps his knowledge of this matter is twelve or fourteen years old. In 1890 we changed all that and we established a new tribunal, which undertakes to pass upon these questions of classification. We provided for an appeal from that tribunal to the circuit and district courts, and the cases went up with the evidence as appeal cases. The Senator from New York has undoubtedly stated what is true as to what was the practice before the passage of the act of 1890, creating the Board of General Appraisers.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER (Mr. KEAN in the chair). Does the Senator from Maryland yield to the Senator from Idaho?

Mr. RAYNER. I had rather go on, if I may be permitted to proceed.

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Idaho?

Mr. RAYNER. I want to proceed for about five minutes. Then I will yield to the Senator.

Mr. President, I prefer the legal opinion, at least, of the Senator from New York [Mr. ROOT] to the legal opinion of the Senator from Rhode Island [Mr. ALDRICH]. The Senator from New York has stated that under the old law, when these propositions were before the court at the suit of the party aggrieved upon questions of classification, the court empaneled a jury.

Mr. ALDRICH. Would the Senator from Maryland permit me to interrupt him for a moment?

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Rhode Island?

Mr. RAYNER. I do.

Mr. ALDRICH. I should like to make a statement to the Senator from Maryland, which may relieve some of his apprehensions in reference to this matter. This act in relation to a customs court was prepared at a conference between the Attorney-General and his representatives, the Secretary and Assistant Secretary of the Treasury and their representatives, and the officers of the customs in New York, all of whom went over this matter with the greatest care. It not only was submitted to the Attorney-General, but it was submitted to leading lawyers that he had in communication with him. It was also submitted to the Cabinet, and it has the approval of the Cabinet and of the President of the United States.

Mr. RAYNER. What do the Secretary of Agriculture and the Secretary of the Navy know about law?

Mr. ALDRICH. I think the Senator would perhaps be willing to admit that our late associate from Pennsylvania, the present Secretary of State, has some knowledge of law.

Mr. RAYNER. The Secretary of State, yes; but where is the guaranty that the Secretary of State has approved of such a provision as this? I feel quite sure that the Secretary of State has never approved of this proposed law—never. No one with his professional attainments could approve of a law of this sort.

Mr. ALDRICH. There are several other gentlemen in the Cabinet who, I think, have some knowledge of law. The present Attorney-General is supposed to have some knowledge of law, and I think the President of the United States also has some little knowledge of law.

Mr. RAYNER. Yes; they have knowledge of law; but I have no knowledge that any of them have had anything to do with this proposed enactment.

Mr. ALDRICH. This legislation, or analogous legislation, has been considered by more lawyers and by more business men than any other legislation that I have any knowledge of whatever. It has been decided in the courts for twenty years, or since 1890.

Mr. RAYNER. Where is the decision?

Mr. ALDRICH. No; I mean analogous legislation, fixing the duties and powers of the Board of General Appraisers, has been passed upon by the courts; the question of the right of final decision upon these questions has been passed upon by the courts; and I am sure if the Senator from Maryland, who is a great lawyer and who understands all these questions, had time to give this subject more than a cursory examination for a few minutes this morning, he would agree with every one of these propositions.

Mr. RAYNER. Now, will the Senator from Rhode Island permit me to go on for about ten minutes, for I know his anxiety to pass this proposed law?

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Idaho?

Mr. RAYNER. If I could be permitted to just finish a sentence, I would be much obliged to the Senator from Idaho. Here I am in the middle of a sentence. It is impossible to pursue a logical argument in any such way as that. We do not use that process in court. Let me proceed for five or ten minutes.

Mr. BORAH. I apologize to the Senator.

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Idaho?

Mr. RAYNER. I am compelled to submit.

Mr. BORAH. I apologize to the Senator from Maryland and will not interrupt him.

Mr. RAYNER. If the Senator wants to interrupt me as I go on, I have no objection, but I have not yet been able to state the point.

The Senator from Rhode Island knows all about tariff laws, but I very seriously object to taking his opinion upon a question of constitutional law. The President is a very eminent authority, and his Secretary of State is certainly a very eminent authority. I have yet to learn that the Attorney-General has anything to do with the passage of this bill. I tried to call him up this morning, but could not get the office. I doubt very much whether he supervised the preparation of this provision. I doubt very much whether the Secretary of State supervised it. Such bills originate in some mysterious way, and they do not receive the attention they are entitled to.

If I am wrong, the lawyers of this body will make that plain, but there is no use getting impatient about it. It is a question of law, and I want the Senator from Rhode Island to listen to me for a few moments, if he will. Is the Senator prepared to listen to me for about ten minutes?

Mr. ALDRICH. I am.

Mr. RAYNER. It does not hurt anybody if I am right; and if I am wrong, it is not the first mistake I have made, nor will it be the last. I am pretty well satisfied that I am right.

Mr. BORAH rose.

Mr. RAYNER. I suppose the Senator from Idaho has something to say.

Mr. BORAH. I was waiting until the Senator had concluded his sentence, so that I could in order ask him a question.

Mr. RAYNER. There is a semicolon here now.

Mr. BORAH. I want to know——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Idaho?

Mr. RAYNER. I have to yield.

Mr. BORAH. Mr. President, I was simply seeking information. I suppose it is under Article VII of the amendments to the Constitution that the Senator makes his argument.

Mr. RAYNER. Partly; but not entirely. There are two or three other articles. I will make another argument presently; and that is, that you can not convict a man in a criminal court unless you give him an opportunity to be confronted by the witnesses against him.

Mr. BORAH. What I was going to ask the Senator was whether or not a suit of the kind contemplated in the pending amendment would be an action at common law?

Mr. RAYNER. That is one of the questions, but I construe Article VII of the amendments to the Constitution to mean every suit that is not in equity. I understand that to mean a distinction between a suit at common law and a chancery suit. If it means at common law, of course it includes statutory law, because if it did not none of the cases in federal courts would come under it. When it says "common law" it does not intend to exclude suits of the United States, but it includes them; and the words "common law" are used in contradistinction to the words "in equity" or "in chancery."

Mr. BORAH. My mind is open to conviction by the argument of the Senator from Maryland. At present I do not believe the provision has reference to this kind of action.

Mr. RAYNER. Mr. President, suits at common law, in my judgment, comprise everything except suits in equity. Every suit, except a suit in equity, that involves a question of fact is comprised in the words "in suits at common law;" and I think that whenever such a suit involves over $20 the party is entitled to a jury trial somewhere or at some time. The Constitution provides:

In suits at common law where the value in controversy shall exceed $20 the right of trial by jury shall be preserved.

There are hardly any customs cases where the value in controversy does not exceed $20. These questions of classification are always questions of fact. The Senator from Rhode Island is not here, because he has made up his mind to pass this bill whether it is a legal bill or not, and he does not want to listen to any argument on it. As I have said, these questions are always questions of fact, and under the old procedure, now repealed, there was always a right to a jury trial, and this law ought to be reenacted now.

Mr. FLINT. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from California?

Mr. RAYNER. Yes.

Mr. FLINT. Does the Senator know of a single instance where they have impaneled a jury since the act of June, 1890, went into effect?

Mr. RAYNER. The Senator from New York [Mr. ROOT] has stated what the practice was under the old law. He said just now that they had jury trials in every case. I do not know what the practice is as to jury trials under the present law.

If you are entitled to a jury trial as a constitutional right under the old law, why should you not be entitled to a jury trial as a constitutional right under any law? The Constitution does not change with different enactments.

Mr. FLINT. I ask the Senator, does he know of his own knowledge in his entire practice of a single case where there has been a jury impaneled?

Mr. RAYNER. No; I do not under the present law which we are repealing.

This is a most serious question; it is a more profound question than the Committee on Finance think it is; it is a question whether at any stage in the proceedings a jury trial can be denied. If the Senator from Idaho is right as to the Constitution of the United States in this particular, that suits at common law do not comprise these cases at all, that is the end of it; but if suits at common law do comprise these cases, then at some stage of the proceedings there must be a jury to try them.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Idaho?

Mr. RAYNER. Certainly.

Mr. BORAH. I have not given that matter very much consideration, and, as I said a moment ago, the Senator from Maryland may be entirely correct; but my opinion is that this kind of an action is not an action known to the common law, and that it is not a suit at common law under the Constitution. I know the courts have been called upon to interpret what is the meaning of the phrase "a suit at common law." They have held that many special proceedings were unknown to the common law and did not come within that provision or that phrase; and I was simply waiting to hear the argument of the Senator.

Mr. RAYNER. I am much obliged, but the Senator from Idaho will realize that the Constitution does not mean suits known to the common law. It says "in suits at common law." There are hundreds of suits that are brought under the common law that were never known at common law. I do not give this as a definite opinion. I am very careful about giving opinions. I wish somebody would bring the Senator from Rhode Island in here so he can understand what I am talking about. I am never absolutely certain unless I have carefully examined the cases. There is no case on this question, and I do not undertake to say positively and absolutely that such a proceeding as would be covered by this provision would be a suit at common law; but I give the Senate my impression that it is a suit at common law, for the reason that suits at common law comprise everything outside of equity or chancery.

If the Senator has any decision saying that a man is not entitled to a jury trial at any stage of this proceeding, I should be glad if he would give it to me. There might be such a decision—we have been looking for it—and if there is such a decision, I should be very much obliged to the Senator to give it to me. That would not change my mind about the invalidity of this provision upon another ground; but it would help us out very much if the Senator could show me some case which holds that at no stage of this proceeding from the time a duty is levied by the collector to the time that it goes to the appraiser's office and to the time there is a final decision of the court—at no stage of that proceeding, no matter if it involves $100,000, is the party entitled to a jury trial in any event. If he can produce such a case, then I am wrong about it.

Mr. FLINT. It has been uniform practice——

Mr. RAYNER. I do not care about the practice.

A bad practice does not make good law. I do not care what the practice has been. We are instituting here a tribunal under the Constitution; we are instituting a tribunal with judges for life; we are instituting a tribunal whose ultimate decrees you can not appeal from, and we might as well examine into the foundations upon which this tribunal is to be organized.

I do not think there are many of us who realize what the proposition is. I did not until I took it up. There seems to be a good deal of hurry and unnecessary impatience about it.

Now, I want to take a few moments to point out that the absence of a jury trial will tend to convict innocent men in violation of another provision of the Constitution of the United States. I want the Senator from North Dakota, who is a good lawyer, to understand that I do not give it as my definite opinion that this is a suit at common law; I want the Senator from North Dakota, the Senator from Idaho, the Senator from California, and all Senators to understand that I only state me, of course I am perfectly willing to acknowledge that I am wrong.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Idaho?

Mr. RAYNER. Certainly.

Mr. BORAH. According to the practice under the former law, I think, the suit was one at common law, because the amount was collected and paid under distress, under protest, and a suit was brought to recover back that amount, which was that, in my judgment, it looks as though it would be classed as a suit at common law. If there are any authorities against an action known to the common law and an action at common law. I have no doubt that under that practice the defendant was entitled to a jury trial, and must have had a jury trial; but that is not this action.

Mr. RAYNER. Then that demonstrably answers the proposition. The Senator from Idaho has answered himself. That irresistibly demonstrates the proposition. If the right to recover back the money is a suit at common law, clearly the right to determine whether the money is payable is a suit at common law. If, after paying the money, in a suit to recover it back it comes under this provision of the Constitution, then when the court is called upon to determine whether or not the money shall be paid, that unquestionably is a suit at common law. The Senator from Idaho has answered himself. If that has been held, that is an end of all necessity for the further investigation of the subject.

Now, let me go on for a moment to the second point. I am opposed to anything that deprives an American citizen, in a case where he is liable to be sent to prison, of the right of jury trial and to be confronted by the witnesses against him. I have fought that proposition here over and over again upon other provisions of statutes. I recollect two years ago, when the ex-President wanted to send a lot of people to prison, and we had a bill up here to accomplish that purpose, we fought it persistently, and we defeated it. I am opposed on general principles to the denial of the right of trial by jury. I believe in the right of trial by jury in a criminal case. I do not care so much about it in civil cases. But these customs cases frequently eventuate criminally. There is the trouble about it. It is a criminal procedure that follows this civil procedure that we are dealing with, and I want to maintain the right of jury trial, if it exists under the Constitution.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Idaho?

Mr. RAYNER. I do.

Mr. BORAH. I do not understand that a customs court is given criminal jurisdiction.

Mr. RAYNER. None whatever. That is the trouble about it. If it had criminal jurisdiction, then the Senator from Idaho will admit that there must necessarily be a jury trial.

Mr. BORAH. Unquestionably.

Mr. RAYNER. I wish the Senator from Rhode Island was here, because I think he could understand this.

Mr. HEYBURN. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the senior Senator from Idaho?

Mr. RAYNER. I do.

Mr. HEYBURN. Will it interrupt the Senator?

Mr. RAYNER. No; not at all.

Mr. HEYBURN. The Senator has classified causes into two classes, one in equity and the other at law, and has confined the right of trial by jury to the causes at law, and says those not triable by jury are equity causes. The statutes of the United States have given the right of action in a number of cases which are neither in law nor in equity, but special proceedings.

Mr. RAYNER. That is right.

Mr. HEYBURN. The United States Supreme Court has said so in a case brought in support of an adverse suit filed against an application for a patent. They said it was neither a case at law nor in equity, and that in such a case the suitors are not entitled to a jury. Such cases do not come within either class, but are special proceedings that arise out of the statutes of the United States and their enforcement.

Mr. RAYNER. That is perfectly correct, Mr. President; and in a long line of cases, which the Senator from Idaho will recall, the Supreme Court has stated that such cases were always tried by the principles of common law.

Mr. HEYBURN. But with no jury.

Mr. RAYNER. Whenever there is a statute, it is statutory law, and statutory cases are tried on the principles of the common law. When the Constitution says cases "at common law," it means cases tried by the principles of common law as distinguished from the cases tried by the principles of equity jurisprudence. I submit this point, and it is one for investigation.

Mr. ALDRICH. Mr. President, I should like——

Mr. RAYNER. The Senator has not been here and has not heard what I have said.

Mr. ALDRICH. But I should like to say a word in regard to the last suggestion.

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Rhode Island?

Mr. RAYNER. I do.

Mr. ALDRICH. I should like to remark, in that connection, that I have been studying tariff legislation for thirty years.

Mr. RAYNER. We all know that.

Mr. ALDRICH. One of the first things that I learned was that the Government, in the administration of customs cases and the collection of taxes, fixed the method by which taxes are to be collected and adjusted the legislation as to their payment without reference to common-law proceedings or any other sort of proceedings. I have never before heard a lawyer undertaking to dispute that proposition.

Mr. RAYNER. The Senator hears one now.

Mr. ALDRICH. I have heard one, but I do not think I will hear any more.

Mr. RAYNER. We will see about that.

Mr. ALDRICH. I think when the Senator from California [Mr. FLINT] submits the cases that have been considered by the Supreme Court of the United States upon this precise point over and over again, there will be no other lawyer to dispute the proposition.

Mr. RAYNER. Why not let us have the cases?

Mr. FLINT. When the Senator finishes, I will do so.

Mr. RAYNER. Let me have them now. I think that is but fair.

Mr. ALDRICH. The Senator from California has a large number of cases.

Mr. RAYNER. Let me have one.

Mr. FLINT. When the Senator finishes, I shall be glad——

Mr. RAYNER. Give me one case.

Mr. FLINT. No. When the Senator finishes, I shall be glad to go on in my own way. I do not wish to interrupt him.

Mr. RAYNER. Will you let me have the cases? Will the Senator hand me the cases?

Mr. FLINT. I shall be very glad to do so when I make my remarks.

Mr. RAYNER. That is a very unfair way to try a question of this sort. I do not believe there are any such cases. I do not believe there is a case in the world on the point; otherwise the Senator from California would let me look at them and comment on them as I go along. I never knew a trial lawyer, when he had a case directly opposite to the point made, who would not let it be seen. As the Senator from California goes along, the legal minds of this body will discriminate and find out that the cases have nothing to do with this subject. I want a case upon the point that at no stage of this proceeding upon a question of fact are the parties entitled to a jury trial. That is the sort of case I want. I pause here for the case.

Mr. ALDRICH. Mr. President——

Mr. RAYNER. With great respect, I do not care for the Senator from Rhode Island to say anything in response to that. This is not a question of experience; it is a question of law. I want the Senator from California to give me a case. I can not take the legal opinion of the Senator from Rhode Island, as much as I like him.

Mr. ALDRICH. I was going to ask the Senator a question of fact.

Mr. RAYNER. Ask me a question of fact, then.

Mr. ALDRICH. Does the Senator think there has been any case, or can he point out any case, that has been tried before a jury on a question of classification anywhere in the United States since the act of 1890 was passed?

Mr. RAYNER. I have just gone over that subject while the Senator was absent. I have just discussed it.

Mr. ALDRICH. Very well; but can the Senator point to a single case where that has been done?

Mr. RAYNER. No; but what does that prove?

Mr. ALDRICH. It proves that it has not been done; and it can not be done.

Mr. RAYNER. It does not prove anything at all. Jury cases were tried under the old act; that is admitted.

Mr. ALDRICH. I assume that if the litigants in all these cases which have been tried during the last twenty years had had any such constitutional right, they would have exercised it in some case.

Mr. RAYNER. Not necessarily.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Idaho?

Mr. BORAH. The Senator from Maryland referred to me.

Mr. RAYNER. I suppose I will yield.

Mr. BORAH. The Senator from Maryland referred to me by name, or I should not have interrupted. I have not given very much consideration to the constitutionality of this act; but when I read it I had no doubt about its being constitutional. I am opposed to the act, but not upon that ground. I said, however, at the beginning of the debate, that I was perfectly willing to hear the Senator from Maryland; and that if he adduced any argument in favor of its constitutionality I should be very glad to hear it, because I should like to see the amendment defeated. But since he has referred to me, I will simply say that, in my opinion, it is a constitutional amendment.

Mr. RAYNER. The Senator from Rhode Island nods his head. That satisfies him, but that does not satisfy me. The Senator from Idaho may think it is constitutional and I may think it is unconstitutional. That question is for the courts to determine. I said in the absence of the Senator from Rhode Island—if he had been here he would have saved me the trouble of repeating it, and I hope he will listen to me now—that I was not certain about this point. But the Senator from Rhode Island can not brush it away. He does not understand it. You might as well ask Doctor GALLINGER, of New Hampshire, about it, and have a physician come in and settle the question of law, as to call upon a Senator who is not a lawyer to settle a question that requires years and years of study to understand.

Mr. ALDRICH. It is——

Mr. RAYNER. Let me go on; because the Senator from Rhode Island is not throwing the slightest light upon this question.

Mr. ALDRICH. I was only going to suggest to the Senator from Maryland that all of his years of profound study do not seem to have enabled him to arrive at a conclusion as to this matter.

Mr. RAYNER. Why, certainly not. The legal mind is frequently in doubt upon important questions. Do you suppose for a moment that I would stand here before the Senate and say positively that this is the law? I am showing you that the matter is involved in doubt, and that you are doing a dangerous thing, one that could be removed by a few lines in the statute giving a jury trial upon questions of fact somewhere in the law as it was under the law before 1890. One line will do the work. But the Senator from Rhode Island does not want it.

He wants these judges ultimately to determine this question. He will not leave it to the determination of a jury.

Mr. FLINT. If the Senator will permit me, this act gives the right to sue the Government, does it not?

Mr. RAYNER. I do not know.

Mr. FLINT. They would not have the right without an act of Congress.

Mr. RAYNER. The act does not give them the right to sue.

Mr. FLINT. But by an act of Congress they have the right to sue, have they not?

Mr. RAYNER. After this act is passed?

Mr. FLINT. Yes; it takes an act of Congress.

Mr. RAYNER. Is it the Senator's opinion that after this act is passed they will still have the right to sue to recover back these duties? Then the Senator has not read the act.

Mr. FLINT. I understand no right to sue the Government exists, except it is authorized by an act of Congress. The Government has the right, under that act, to impose any conditions that it desires as to how this money shall be collected.

Mr. ALDRICH. Mr. President, I did not suppose the Senator from Maryland considered my opinion of the law worth anything.

Mr. RAYNER. I want the Senator present. I want him to hear this argument.

Mr. ALDRICH. All right.

Mr. RAYNER. It is not necessary to consult the Senator from New York [Mr. ROOT]. I think he will agree with me. Whenever the Senator from Rhode Island is in great trouble he consults the Senator from New York. I again want it understood that I do not give this as my definite opinion, because I am careful in coming to legal conclusions. I want the Senate to understand that. I do not want any Senator to say that I gave it as my definite opinion that there must be a jury trial in the first instance. I am merely submitting the point. I do as I have always done in the trial of a case. Other lawyers have not done it; but I have always submitted the cases on the other side. If I found a case against me on the other side, I have considered that I would be suppressing the truth unless I gave it to the court. In criminal cases, when I was the attorney-general of my State, if there was anything in favor of the prisoner, I gave the court the cases. I always gave the court the cases, because I then felt it my duty to defend the prisoner if he was innocent just as much as I felt it my duty to prosecute him if he was guilty. And if there are any cases on the other side, I want them.

It is not in a contentious spirit that I have risen here. I have merely risen to throw what light I can upon the subject. I may be all wrong; but then, again, I may be all right. It is for the Senate to determine whether I am right or wrong. But I will repeat, for the last time, that I do not say positively that this must be done.

Let us see what this act says:

SEC. 29. That a United States court of customs appeals is hereby created, and said court shall consist of a presiding judge and four associate judges appointed by the President, by and with the advice and consent of the Senate, each of whom shall receive a salary of $10,000 per annum. It shall be a court of record—

Make no mistake about this. This is a new court. It is a court organized under the Constitution of the United States. It is not an administrative body; it is not an executive body; it is a judicial body; it is a court of record—

with jurisdiction as hereinafter established and limited. Said court shall prescribe the form and style of its seal and the form of its writs and other process and procedure—

I want to say to the Senator from California that at first thought I was under the impression that this carried with it the right to impanel a jury. I thought it carried with it that right. I hope it does. If so, there is no necessity of investigating it any further. But upon a close examination I think he will certainly come to the conclusion that that power is not embraced within the words "process and procedure."

and exercise such powers conferred by law as may be conformable and necessary to the exercise of its jurisdiction. It shall have the services of a marshal.

What do you want with a marshal? What does a marshal do? After the evidence is all before the court, what is the use of putting a marshal there just for the purpose of creating an office and paying him a salary?

Mr. FLINT. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from California?

Mr. RAYNER. Yes.

Mr. FLINT. The marshal performs the same duties that the marshal does in the circuit court of appeals of the United States.

Mr. ALDRICH. Does the Senator think that is a question I may answer, or does it involve a constitutional question?

Mr. RAYNER. Is the Senator a lawyer?

Mr. ALDRICH. No.

Mr. RAYNER. Now, I want you to listen to me and not interrupt me.

Mr. ALDRICH. I will do it.

Mr. RAYNER. I will ask the Senator, because I do not know, what the Senator's profession is? I know his profession is that of a statesman; but has he studied law or the Constitution? I ask because I do not know.

Mr. ALDRICH. Mr. President, I am not a lawyer.

Mr. RAYNER. Then how on earth can the Senator throw any light on a legal question that it has taken me years to study, when the Senator has never even——

Mr. NELSON. Will the Senator from Maryland permit me a moment?

Mr. RAYNER. Certainly.

Mr. NELSON. I think the Senator from Rhode Island is not even in the predicament of Wilkins Micawber, because in his case he considered himself a lawyer and thought he ought to be chief justice of the court of king's bench, because he had acquaintance with law as the defendant in a civil process for debt. [Laughter.]

Mr. RAYNER. I have no feeling about this matter. There is no one I am fonder of than the Senator from Rhode Island. He knows that. He knows the respect and esteem in which I hold him. But the Senator does not know everything. There are plenty of things the Senator does not know, and one of the things that he does not know and has not the remotest conception about is law.

Mr. ALDRICH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Rhode Island?

Mr. RAYNER. Yes.

Mr. ALDRICH. I have long held the opinion that we needed a customs court. The question came up as to what kind of a court we should have, and it was necessary to have somebody make a draft of an act of that sort. I asked the Secretary of the Treasury to detail for a conference on the subject his Assistant Secretary, who has long had charge of customs matters, and who is a lawyer. I asked the Secretary of the Treasury to attend the conference. I asked the Attorney-General to be present himself, by an Assistant Attorney-General, and by the expert of his department who has the most knowledge of legislation with reference to customs matters. I also asked the people in New York who have had most to do with the enforcement of the law to send the district attorney or an assistant district attorney and the expert who had the most knowledge of the law. I asked all these gentlemen to attend a conference for the purpose of preparing this customs-court act.

The bill was prepared by those experts, who know more than any other men that I know of about the customs law and the administration of the customs law and all the practical and legal questions involved. I should perhaps exclude the Senator from Maryland from that description; but with the exception of the Senator from Maryland, they had a better knowledge and more knowledge and more accurate knowledge of the subject than any men that I know of. This bill was prepared by those men. It was submitted, after it was prepared, to the other gentlemen I have alluded to, including the President of the United States.

My reasons and the reasons of the committee for taking these precautions were that we were not all lawyers; and we were extremely anxious to have the provisions of the bill tested by the men who had the most knowledge upon the subject. I wanted their views because I am not a lawyer—although, as I have said, I have been studying this question, from a practical standpoint, for thirty years, and I do know something about what the practice has been in the courts and before the General Appraisers.

I submit to the Senate that the precautions taken by the committee with reference to this matter are all that anyone could take. And I submit, with great confidence to the judgment of the Senate, the conclusions this conference arrived at, commended as they are by the members of the Committee on Finance, some of whom are lawyers.

Mr. RAYNER. Mr. President, the Senator may be right about all this, and he may be wrong. The Senator may be right, and the President and the Assistant Secretary may be right. But this is all one sided. Nobody presented any contrary views. It was trying a case ex parte. There was no opposition to it. These gentlemen all met together, and they wanted a customs court, and they framed a bill providing one. There was no lawyer there in opposition to it. There was no suggestion of

any legal objection. It is always easy to win a case if there is nobody against you. It was all ex parte. Knowing the Secretary of State as well as I do, I am sure that if I had appeared there and explained the objections to this bill the Secretary of State would at least have considered them. The Senator from Rhode Island does not even seem to be willing to consider them.

I was going on to read the bill, if the Senator will let me proceed with the reading of it, because the Senator from Rhode Island is not illuminating this discussion in any way. He is enveloping it in Cimmerian darkness by telling me a thing that every lawyer will deride—that this has been the practice; this has been a decision of the Cabinet.

What do I care about Cabinet decisions and practices when a constitutional question is involved? I say, again, I may be wrong, but the Senator from Rhode Island, with great respect to him, can not convince me that I am wrong.

I just want to finish this, and see what sort of a court this is. I have read to some extent what sort of a court it is. Let us look at it further:

The court of customs appeals established by this act shall exercise exclusive appellate jurisdiction—

It does not exercise any appellate jurisdiction at all. It exercises a jurisdiction by review. I repeat here now, in the presence of every lawyer in the United States, that, technically speaking, there is no such thing as a court of appeals sitting to hear an appeal from the decision of an administrative officer. It is a review of the officer's proceeding and not an appeal, because an appeal always means a judgment by an inferior judicial tribunal or a tribunal exercising the quasi powers of a court. I know what I am talking about. I have practiced my profession constantly, day in and day out, for nearly forty years, and I would be derided by any court in the land if I talked about giving a judicial tribunal an appeal from an administrative officer.

This is a review by the court. The court itself is practically a court of original jurisdiction, just as our United States circuit courts are courts of original jurisdiction. Will any Senator say that when the Interstate Commerce Commission imposes a rate on a railroad, and I go into court and ask the court to declare the rate unconstitutional, that is an appeal? It is absurd. This is the same thing. This is a review from an administrative officer. No question was ever discussed more comprehensively than that question was upon the floor of this Senate. You may call it what you will; it does not change what it is.

Let us see:

Exclusive appellate jurisdiction to review—

They were afraid of the word "appeal," and they put in the word "review."

By appeal, as provided by this act, final decisions by a board of general appraisers in all cases.

Now, listen—and I want the lawyers of this body to listen as well as the Senator from Rhode Island, who admitted that he is not a lawyer. It was not necessary for him to make that admission, because we all knew it.

In all cases as to the construction of the law—

And what?

Mr. ALDRICH. Mr. President——

Mr. RAYNER. Give me a moment, now.

Mr. ALDRICH. Mr. President, the Senator has again alluded to the fact that I am not a lawyer.

Mr. RAYNER. You ought not to be ashamed of that, perhaps.

Mr. ALDRICH. I think I am the only Republican member of the Finance Committee that is not a lawyer. But we have some Democrats on that committee who are lawyers. The Senator from Texas [Mr. BAILEY], who does not happen to be in his seat, and the senior Senator from Virginia [Mr. DANIEL] are lawyers, I think.

Mr. RAYNER. But you do not allow them to enter your committee room.

Mr. ALDRICH. I will say that this part of this bill was considered very carefully by every member of the Committee on Finance, including the Senator from Texas and the Senator from——

Mr. RAYNER. Does the Senator mean to say that the senior Senator from Virginia [Mr. DANIEL] has held that this customs-court measure is a constitutional measure? Has he examined it carefully? There he is.

Mr. ALDRICH. I will say that the Senator from Texas [Mr. BAILEY], who is not now in his seat——

Mr. RAYNER. There are other lawyers in this body. The Senator from Texas may disagree with me, but that does not control me. I have the highest opinion and regard in the world for the opinion of the Senator from Texas, but I am entitled to my own opinion.

Mr. ALDRICH. Certainly; but the Senator was trying to find some lawyers who agreed with the committee, and I was suggesting some.

Mr. RAYNER. But the Senator from Texas did not agree with the committee on this question.

Mr. ALDRICH. Oh, yes; he did.

Mr. RAYNER. Because he nodded assent this morning to me when I told him I thought this law was unconstitutional; and I have not spoken to a lawyer on this floor who believes it is constitutional.

Mr. ALDRICH. I will say to the Senator from Maryland that whatever the Senator from Texas might have meant by the nod of his head, he certainly supported this provision in the committee.

Mr. RAYNER. O Mr. President, all that may be. Why does the Senator object so much to a discussion of this matter? He has listened here for days and days; he has been pounded with a continuous volley of fire from the insurgent and rebellious forces on his own side; and yet, when the first argument is made upon this question, he is so impatient with it that he can hardly listen to the argument. I am almost through. You will pass this bill whether it is unconstitutional or not. I know you will pass it. If there was absolutely a provision here that was unconstitutional, it would be passed; but it will not be passed except with my protest, which would have been concluded long ago if I had not submitted to these interruptions.

Let me read this. I want Senators here to listen to this:

By a Board of General Appraisers in all cases as to the construction—

Of what?—

as to the construction of the law and the facts.

I will admit that it is right as to a construction of the law that a man would not have the right to a jury trial. But as to the construction of the facts, we ought—

Respecting the classification of merchandise and the rate of duty imposed thereon under such classification, and the fees and charges connected therewith, and all appealable questions as to the jurisdiction of said board, and all appealable questions as to the laws and regulations governing the collection of the customs revenues—

And what?—

and the judgment or decrees of said court of customs appeals shall be final in all such cases.

That is the language. When this court renders a judgment it is absolutely a final judgment, and a man has been deprived of his property, and as a result of it has been sent to prison without the right of a jury trial.

Let me see whether I am right about that, and then I will conclude this argument. This is my second point. I want Senators to examine section 6. I ask the Senator from Rhode Island, particularly, to turn to section 6; to kindly turn to page 13:

That any person who shall knowingly make any false statement in the declarations provided for in the preceding section, or shall aid or procure the making of any such false statement as to any matter material thereto, shall, on conviction thereof, be punished by a fine not exceeding $5,000, or by imprisonment at hard labor not more than two years, or both, in the discretion of the court.

Let us look at this a minute. You can penalize a man here in a fine not exceeding $5,000, and you can imprison him at hard labor not more than two years if he makes a false statement. Therefore, if a man makes a false statement to the collector of customs he takes his chances of being fined $5,000 and going to jail for two years. Now, look at page 15. I do not care if there are a thousand laws that have a provision of this sort in them, it is not only unlawful, but it is infamous.

Mr. FLINT. Mr. President——

Mr. RAYNER. Does the Senator from California want to interrupt me?

Mr. FLINT. I will let the Senator finish reading it.

Mr. RAYNER. I thought you were going to give me one of those cases.

Mr. FLINT. Yes; but I will ask this question: Does the Senator concede that a person making a false affidavit ought to be punished?

Mr. RAYNER. That is as absurd a question as the Senator from Rhode Island could have asked. The Senator is too good a lawyer to ask that question. I think when a man commits perjury——

Mr. FLINT. What is the point the Senator is making?

Mr. RAYNER. You interrupt me before I get to the point. I told the Senator to take that section in connection with this section. The Senator from California seems to be angry about this business.

Mr. FLINT. Not at all. Mr. President——

Mr. RAYNER. I will submit to no further interruptions, with great respect to the Senator from California, until he gives me his cases. Will the Senator give me his case, and not interrupt me every two minutes? It must be an awful case that the Senator from California has.

Provided, That if the appraised value—

I want the attention of the Senator from Idaho to this—

That if the appraised value of any merchandise shall exceed the value declared in the entry by more than 50 per cent, except when arising from a manifest clerical error, such entry shall be held to be presumptively fraudulent—

That is all right as far as it goes—

and the collector of customs shall seize such merchandise and proceed as in case of forfeiture for violation of the customs laws—

I am not complaining about this. Do not misunderstand me—

and in any legal proceeding—

No one will contest the point that a criminal proceeding is a legal proceeding. Nobody will rise here in the Senate and tell me a criminal proceeding is not a legal proceeding—

and in any legal proceeding that may result from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same, and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence.

And he is fined $5,000 and receives a jail sentence for two years. No man will stand here on this floor and justify that provision of the law as being in consonance with the Constitution of the United States.

Mr. FLINT. Mr. President——

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from California?

Mr. RAYNER. Not until you give me your case.

Mr. FLINT. The Senator is so persistent I will refer him to the case of Nichols *v.* United States (7 Wall., 126).

Mr. RAYNER. Let me have it.

Mr. FLINT. I have not the case here. I will send for it.

Mr. RAYNER. Have you an extract from it?

Mr. FLINT. Certainly.

Mr. RAYNER. Let me look at it.

Mr. FLINT. Certainly.

Mr. ALDRICH. Will the Senator allow me?

Mr. RAYNER. Do not interrupt me.

Mr. BORAH. Mr. President——

The VICE-PRESIDENT. The junior Senator from Idaho would be glad to interrupt the Senator from Maryland.

Mr. RAYNER. I have no objection to being interrupted. I yield to the Senator from Idaho.

Mr. BORAH. The sections which the Senator from Maryland was just quoting from are not the sections which have any reference to the jurisdiction of the customs court.

Mr. ALDRICH. They are not.

Mr. BORAH. Those are matters which will go into the regular courts and be determined under judicial procedure. In other words, they are not matters which the customs court would have any jurisdiction over.

Mr. RAYNER. Unquestionably.

Mr. FLINT. In the past twenty years every one of the indictments has been in the district courts.

Mr. RAYNER. I challenge the production of a case that upholds this provision.

Mr. ALDRICH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Rhode Island?

Mr. RAYNER. Of course, I have to yield, but there will be no light thrown on this discussion.

Mr. ALDRICH. I want to throw some light on the subject.

Mr. RAYNER. You have not done it yet.

Mr. ALDRICH. This section is a codification of the customs administrative laws.

Mr. RAYNER. What has that to do with it?

Mr. ALDRICH. It has this to do with it: The provisions offered here have been the law for twenty years and have had the interpretation of the courts, and the sanction, so far as I am aware, of everyone who had anything at all to do with its administration.

Mr. RAYNER. What has that to do with it? That is not the proposition of a lawyer, that an unlawful statute has been upon the Federal Code, that the practice has been indulged in. The income-tax law was on the statute books for a hundred years. Still the Supreme Court reversed it. Give me the cases. I want to deal with cases. Show me a case that has been tried, in which the court has ever held that a collector can produce an ex parte affidavit and throw upon the defendant the burden of proving his innocence. If there is any lawyer in this body who has such a case, I should like to have it put in.

Mr. FLINT. I have the case here now.

Mr. RAYNER. It has been a long time coming. It usually takes about a few minutes to get a book from the Library.

Mr. FLINT. The Senator seems to be the one who is impatient. He has been complaining here that we are trying to rush this bill through. I am sure nobody is trying to rush it through. He seems to be in a frame of mind where he thinks everybody else is impatient. I would like to see the Senator go on. He seems to be making a very clear argument, and is, I think, convincing all the Senate.

Mr. RAYNER. That is a great piece of satire the Senator indulges in. The Senator is not given to irony and satire.

Mr. FLINT. The Senator himself is an expert at that.

Mr. RAYNER. The Senator obtained a quarter of a cent increase in the duty on lemons, and that was his specialty, I thought, and not satire.

Mr. FLINT. That is a pertinent remark.

Mr. RAYNER. And lemons have gone up from $2.50 to $6 a box.

Mr. DAVIS. Eight dollars.

Mr. RAYNER. To $8 a box, and still we are drinking lemonade.

Mr. FLINT. That simply confirms the argument I made in the Senate, that the question of the price of lemons is controlled by the New York and Baltimore importers. And with the tariff unchanged since I made my few brief remarks in the Senate, by manipulating the market, they have raised the price from $2 a box to $9 a box, and the profit of $7 is turned over to the importers of Baltimore and New York at the expense of the American people.

Mr. RAYNER. If this case the Senator has handed me is about the best case the Senator can get, I defy him to produce his worst cases. If this is the case on which he rests, let me read it to the Senate. If that is the best, let us see what it is:

Under the act of Congress of February 26, 1845, relative to the recovery of duties paid under protest, a written protest, signed by the party, with a statement of the definite grounds of objection to the duties demanded and paid, is a condition precedent to a right to sue in any court for their recovery.

Will any Senator tell me what that has to do with the proposition I am arguing?

Mr. FLINT. Go on and read the whole decision.

Mr. RAYNER (reading)—

Cases arising under the revenue laws are not within the jurisdiction of the Court of Claims.

Whoever said that they were?

Mr. FLINT. Read further.

Mr. RAYNER. That is the end of the headnote. Tell me what portion you want me to read. Select your own portion, and I will read it. I know you will select the best, and I will read it.

Mr. FLINT. I can find it. I will take it up, if the Senator desires it, in my own time. As I said before, the Senator's proposition——

Mr. RAYNER. The Senator will not find any portion of the case that he wants me to read. I am willing to read his own case. I am willing to leave it to him to select the best part of this case that he can find. Give it to me.

Mr. FLINT. If the Senator in the case I have given him from the Supreme Court of the United States can not find a place in the decision that applies to what we are discussing, I certainly am not going to enlighten him.

Mr. RAYNER. That is a very childish thing for the Senator to do. The Senator has a decision, he has just handed me this long decision, and I ask the Senator to select that portion of the decision that bears upon the point I am discussing. Now the Senator gives it to me.

Mr. President, I am surprised at the Senator from California. If it had come from the Senator from Rhode Island, I would not have been so much surprised, but I am surprised that a Senator who has been counsel for one of the Pacific railroads, a most capable lawyer, should hand me such a case as this. It is lamentable; it is deplorable. Just listen to it for a minute:

The immunity of the United States from suit is one of the main elements to be considered in determining the merits of this controversy. Every government has an inherent right to protect itself against suits, and if, in the liberality of legislation, they are permitted, it is only on such terms and conditions as are prescribed by statute.

Mr. ALDRICH. That is this whole case.

Mr. RAYNER. This is no suit against the Government. There is where the confusion arises in the Senator's head. This is a suit by the Government against the importer. Make no mistake about that. Ask the Senator from New York [Mr. ROOT] whether it is a suit against the Government. He will answer it. I will abide by his judgment. If you want a competent lawyer,

go and ask the Senator from New York. This is not a suit, Mr. President, against the Government. That is a perfectly correct proposition. There is nothing new about it. In this line of cases courts have over and over again passed upon the proposition that when the Government permits a suit against itself it may regulate the condition upon which the suit is brought. This is not a suit against the Government.

Mr. ALDRICH. How does the dissatisfied importer get his money back?

Mr. RAYNER. This is not getting money back. The Senator does not understand the law that he has framed.

Mr. ALDRICH. I think I do.

Mr. RAYNER. Absolutely not.

Mr. ALDRICH. Let us look at it in a practical way.

Mr. RAYNER. Let us look at it in a legal way; I do not care about the practical way.

Mr. ALDRICH. I trust the practical way is the legal way. The importer is assessed a duty by the Board of General Appraisers in New York upon a certain classification. He is obliged to pay the duty, and he can not get that money back except by bringing a suit against the collector. If dissatisfied, he must appeal from the decision of the collector. He becomes a party to the controversy and he becomes a party under the conditions which the United States fixes.

Mr. RAYNER. Of course the Senator is arguing something that nobody is arguing at all. I am arguing criminal jurisdiction here under this statute, and the Senator is arguing about the importer paying money. Money seems to be upon the mind of the Senator all the time. I am arguing for personal liberty.

Mr. ALDRICH. The Senator knows as well as I do that neither the Board of General Appraisers nor the circuit court or the court to be created by this act has any criminal jurisdiction. We are not proposing to give this court any criminal jurisdiction. The Board of General Appraisers have no criminal jurisdiction.

Mr. RAYNER. If the Senator will sit down he will enlighten the Senate by his silence.

Mr. ALDRICH. Does the Senator from Maryland contend that either the Board of General Appraisers or this court have any criminal jurisdiction?

Mr. RAYNER. I have said there is not a lawyer here who believes that.

The Senator from Texas [Mr. BAILEY] has just arrived. The Senator from Rhode Island said in the absence of the Senator from Texas that the Senator from Texas had clearly examined this measure and pronounced it to be constitutional. If the Senator has done that, I should like to hear him upon that subject.

Mr. CLAPP. Mr. President, while I think many of us thoroughly understand the point the Senator is making, I am going to take the liberty of suggesting that to those who may not be lawyers he has not made it entirely plain.

I am going to say, with the Senator's pardon——

Mr. RAYNER. Does the Senator mean that I have not made it plain to the Senator from Rhode Island?

Mr. CLAPP. Well, to a great many Senators. There are a great many Senators who are not lawyers.

Mr. RAYNER. What does the Senator want me to make plain? Can the Senator make it any plainer?

Mr. CLAPP. I do not think I can; but I think the Senator from Maryland can make it plainer.

Mr. RAYNER. In what way?

Mr. CLAPP. If the Senator will pardon me——

Mr. RAYNER. Certainly.

Mr. CLAPP. The Senator is discussing this question as he would discuss it in court, upon the assumption that the court took notice of the general principles and practice; but the Senator ought to remember that, in a measure, he is discussing it to laymen. I merely make the suggestion to the Senator, that he can make the proposition plainer to those who may not be lawyers.

Mr. RAYNER. If I have not made this proposition plain, it is not within my ability to make it any plainer. I will permit the Senator from Minnesota to make it plainer.

Mr. CLAPP. It is certainly plain to lawyers.

Mr. RAYNER. You can not make a legal proposition plain to laymen. You see that by the Senator from Rhode Island. There is a gentleman with as astute an intellect as there is in this body. If I can not explain it to him, how is it possible to explain it to anybody else? The Senator was not here when we were discussing this question. You have not heard the whole of this discussion. The truth is, Senators go out and then come in and expect a Senator to repeat everything he has said. I do not propose to do it. This is the longest speech I have made since I have been in this body, and I have gone over the proposition. I covered the first proposition; that any layman can understand. The proposition is that in a suit above $20, on the question of fact, a man has a right to a jury trial. Every layman understands that. The Senator from Idaho [Mr. BORAH], for whose legal opinion I have great respect, says he thinks I am wrong about that. The Senator from Rhode Island need not shake his head. Now, never mind, Mr. President——

Mr. ALDRICH. It is a self-evident fact, evidenced by the experience of this country for twenty years, without a single exception, that the Senator is wrong.

Mr. RAYNER. That is the same old thing again. I repeat, in the presence of the Senator from Texas, we had one hundred years of experience under the income tax, and decision after decision held it to be constitutional; and after a hundred years the Supreme Court pronounced it unconstitutional. No lawyer who understands his profession will assert the proposition that because there has been a bad practice that makes good law. Your practice may have been wrong. This question has never been discussed before in this body; and notwithstanding the practice, notwithstanding the Senator from Rhode Island, notwithstanding the preparation of this law by the Cabinet, I hold that, for the reasons I have given and especially for the reasons that I am now giving, it is but an unconstitutional law.

Mr. ALDRICH rose.

Mr. RAYNER. Let me finish.

Mr. ALDRICH. Let me say a word.

Mr. RAYNER. I can not stop you.

Mr. ALDRICH. My proposition is that the universal and unbroken practice——

Mr. RAYNER. The same thing again, "universal practice."

Mr. ALDRICH. Of the country shows conclusively that if the litigants who have taken advantage of this situation had been entitled to a jury trial they would have had it, and the fact——

Mr. RAYNER. Mr. President——

Mr. ALDRICH. Wait a minute. The Senator from Maryland will let me make a statement.

Mr. RAYNER. But not such an irrelevant statement as that.

Mr. ALDRICH. I say that the unbroken practice and experience of the United States for twenty years, if there were no other reasons, show that the Senator from Maryland must be wrong in his statement, and it needs neither the ignorance of a layman nor the intelligence of lawyers to convince any man who has heard his argument what his misgivings are upon the subject, because he says himself he doubts whether he is right or wrong. His misgivings have no foundation whatever.

Mr. RAYNER. I think the Senator would have come out much better if he had kept his seat to-day.

Mr. ALDRICH rose.

Mr. RAYNER. Now will the Senator permit me to finish? One can not argue a legal question with a gentleman who admits that he knows nothing about law; that he never studied it; and neither is it his profession. You might as well bring in an astronomer, a fortune teller, a geologist, or a physician, or anybody else, to argue a question of law with me. You do not see the Senator from New Hampshire, Doctor GALLINGER, get up here and argue this question. There is not a layman in this body, except the Senator from Rhode Island, who has intruded into this discussion, for they all appreciate the fact that this is a legal and a constitutional argument, and I have devoted the study of years to these questions, arguing them with lawyers, the best in the land; but the Senator from Rhode Island can not argue this question at all. There is only one point he makes all day long—"this has been the practice." Does not "the Senator from Maryland" know that "this has been the practice?" I do not care what has been the practice. The question is, Is it a valid practice? Is it a constitutional practice?

I am glad the Senator from Texas [Mr. BAILEY] is here. I will read this section over again, and I want to see if the Senator from Texas thinks it is good law. He may so think, or he may not agree with me. I do not know.

Mr. BAILEY. Before the Senator——

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Texas?

Mr. RAYNER. I referred to the Senator from Texas. I should not have done so if the Senator from Rhode Island had not referred to him in terms, and stated that he had approved of this law.

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Texas?

Mr. RAYNER. Certainly.

Mr. BAILEY. Mr. President, before the Senator reads the section, I want to correct the Senator from Rhode Island [Mr. ALDRICH] to this extent: The Committee on Finance had this matter under consideration at one session of the committee, but it was not then entirely concluded. The furthest I have gone about this matter is, that I am satisfied that it is desirable to have a court. That it is impossible for a judge of general jurisdiction, trying all manner of cases, to qualify him for the trial of this special class of cases I think will be apparent to any man who is at all familiar with the decisions or customs matters; but as to how well and how skillfully this provision has been drawn and as to whether or not it is within the Constitution, I must reserve my judgment until I hear the Senator from Maryland and until I look closer into it myself.

I have assumed that the amendment was drawn by the officials of the Attorney-General's Department, and that they have drawn it properly; but unless the present Attorney-General has used more skill in drafting this provision than a recent one which has been exhibited to the Senate, I shall have to reserve my judgment, even if it is his handiwork.

Mr. RAYNER. I am glad the Senator from Texas resents the imputation that was cast upon him by the Senator from Rhode Island. I know he is too good a lawyer to come to a conclusion upon a question of this sort without examining it. He might differ with me, but he does not pass upon great questions like this without any examination, no matter who prepared the bill. Is the Attorney-General infallible? I have seen Attorneys-General make the greatest mistakes on earth. I say as to one of the Attorneys-General who preceded the present Attorney-General that if you gave him a promissory note and a confession of judgment upon it, he would lose the case. [Laughter.]

Mr. BAILEY. That is such an apt characterization of an attorney-general I once knew that I should like to have his name to go along with the photograph.

Mr. ALDRICH rose.

Mr. RAYNER. I want to go on, Mr. President. I can not yield to the Senator from Rhode Island.

Mr. ALDRICH. Will the Senator pardon me?

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Rhode Island?

Mr. RAYNER. I will pardon him for a moment, as requested.

Mr. ALDRICH. Mr. President——

Mr. RAYNER. I object to interruptions now. I wish to proceed.

The VICE-PRESIDENT. The Senator from Maryland declines to yield further.

Mr. RAYNER. It is a great pity that the junior Senator from New York [Mr. ROOT] could not have made the argument, instead of putting forth the Senator from Rhode Island to make an argument of this sort. I do not think the President of the United States will be under very many obligations to him for doing it.

I want to read now to the Senator from Texas this portion of section 7 of the pending amendment:

Provided, That if the appraised value of any merchandise shall exceed the value declared in the entry by more than 50 per cent, except when arising from a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs shall seize such merchandise and proceed as in case of forfeiture for violation of the customs laws, and in any legal proceeding that may result from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same, and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence.

If the Senator will turn back to section 6, he will see what precedes that:

SEC. 6. That any person who shall knowingly make any false statement in the declarations provided for in the preceding section, or shall aid or procure the making of any such false statement as to any matter material thereto, shall, on conviction thereof, be punished by a fine not exceeding $5,000, or by imprisonment at hard labor not more than two years, or both, in the discretion of the court.

I should like to know whether the Senator from Texas unites in the decision of the Senator from Rhode Island and believes that that is a constitutional provision—that you can, on an ex parte entry, send a man to prison unless he can prove his innocence? Now, let me, in conclusion, read two sections of the Constitution to which I have referred, and then I have finished. Article VI of the Constitution provides:

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him.

He is never confronted by a witness, but is confronted by an ex parte statement. Whoever heard of any such proposition as that? All through the common law runs the principle greater than the common law itself—that every man is presumed to be innocent until he is proven to be guilty. Every man has a common-law right and a constitutional right to be confronted with the witnesses against him. He has the right to face such witnesses; he has the right to cross-examine witnesses. Before any presumption of guilt attaches he is innocent, and innocent until he is proven guilty; but here comes in the ex parte statement that proves him guilty until he proves himself innocent.

Now comes one more provision of the Constitution.

Mr. CLAPP. Mr. President——

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Minnesota?

Mr. RAYNER. I will when I read this; then I am going to yield the floor. The Constitution provides:

ARTICLE V.

No person shall be held to answer for a capital, or otherwise infamous, crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.

You deprive him of his liberty without due process of law. I challenge contradiction upon the floor of this Senate, that when you confront a man with an ex parte entry and throw upon him the burden of proving his innocence, that you deprive him of liberty without due process of law.

Mr. President, I have nearly finished. I want to say again to the Senate that on this last point I am perfectly satisfied that I am right, absolutely satisfied that I am right; but I have some doubt about the first point; and if the Senator from California [Mr. FLINT] will furnish me with cases negativing the proposition, then I shall yield that point to him. I had no idea when I entered the Chamber this morning of discussing this question at all. It involves a great constitutional question; and if this bill is not amended, I have not the slightest doubt but that the courts will set it aside.

Mr. President, the other day, when we were celebrating the Fourth of July with a very refreshing colloquy between the Senator from Rhode Island [Mr. ALDRICH] and myself, I insisted upon certain principles of law. I had at the time no case at all to sustain them. We were all looking around for a case. I now have such a case, Mr. President. It is a case directly in point. It will take me only a few moments to refer to it, and it sustains every proposition of law I was contending for in that discussion. And the strangest thing about the case is that it was tried, I understand, by the junior Senator from New York [Mr. ROOT]. It was tried in the lower court, and the junior Senator from New York there attempted to maintain the proposition for which the Senator from Rhode Island contended the other day. The court ruled against him, and ruled that an information for forfeiture was a criminal proceeding.

I am going to give the Senator the case, and then the Senator from Rhode Island can, of course, do what he thinks is proper to be done. But in view of this case, I doubt very much whether the amendment, which was put in at my suggestion, does not still render this section of the law unconstitutional. I desire to submit it to the Senator from Rhode Island in just a few words, because this is an exactly identical case. I had the case in mind, but I could not think of it at the time.

Let me read the section as it stands now. It is section 67. I read from page 340 of the new bill:

Provided, That if the appraised value of any merchandise shall exceed the value declared in the entry by more than 50 per cent, except when arising from a manifest clerical error, such entry shall be held to be presumptively fraudulent, and the collector of customs shall seize such merchandise and proceed as in case of forfeiture for violation of the customs laws, and in any legal proceeding—

We had the following words put in, excepting criminal prosecutions. The question before the Senate is whether these words are sufficient. If the Senate considers them sufficient, I am willing to abide by them. But in the utmost good faith, I submit that they are equivocal, in view of the decision I shall give the Senate in a moment.

And in any legal proceeding other than a criminal prosecution that may result from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same, and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence.

The question was, Is an information for forfeiture a criminal proceeding? Because if an information for forfeiture is a criminal proceeding, then, unless you except the information for forfeiture, you put upon a man the burden of proof of his innocence. You provide in this law that he is guilty on an ex parte certificate unless he proves himself innocent.

Let us look at what the Supreme Court has said:

This was an information filed by the district attorney of the United States in the district court for the southern district of New York.

I apprehend that was Senator ROOT.

Mr. CARTER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Maryland yield to the Senator from Montana?

Mr. RAYNER. Yes, Mr. President; I yield.

Mr. CARTER. It appeared from the discussion of this subject the other day that a misunderstanding existed with reference to the proceedings which might obtain in consequence of some dereliction occurring under this section of the law. In the first place, it seems to me that reference to the old, elementary idea of a cause of action elucidates the point very clearly.

A proceeding to forfeit title to property is essentially a proceeding in rem. It is a proceeding against the thing. It can not involve the life or liberty of any individual having any special relation to the property. If, however, it occurs that in connection with the declaration of value or any act concerning the importation, the reputed owner or the real owner is guilty of a crime, that crime would be prosecuted entirely independently of the title to the property. It would be a proceeding against the person. I think that as far as forfeiture is concerned, no question of personal liberty is involved, but only a question of title to the property or the forfeiture of it.

Mr. RAYNER. I submit to the Senator that that question is not involved. It is not a question of personal liberty now. It is forfeiture under this decision. I want to be very frank with the Senate about this. I have my serious doubts about the constitutionality of this provision. I do not intend to impede the passage of the law; but there will be some lawyer that will take hold of this section and attack it on the ground I mention. This is not a question of personal liberty. The whole question is, Is an information for forfeiture a criminal action? If it is a criminal action, the bill is wrong.

Mr. HEYBURN. Mr. President——

Mr. RAYNER. I should like not to be interrupted for just a moment. Will the Senator allow me to explain this?

Mr. HEYBURN. Oh, certainly.

Mr. RAYNER. The other day for two hours there were just a series of interruptions; and if Senators will just give me five minutes, I will either yield the floor or let the Senate adopt the provision. Let me make the explanation as plain as I can.

Is an information for forfeiture a criminal action? If it is a criminal action, you can not make this entry evidence against a man. Everybody on the floor can understand that. It is not a question of liberty; it is a question of what sort of an action it is. Is it a criminal action?

I will read what the Supreme Court say upon the subject. Mr. Justice Bradley delivered the opinion of the court. I should like the attention of the Senators who are framing the bill; for, while I shall not insist upon this, I submit to them whether they want a bill that is certainly open to attack, to say the least of it.

This was an information filed by the district attorney of the United States in the district court for the southern district of New York in July, 1884, in a cause of seizure and forfeiture of property—

That is this case—

Against 35 cases of plate glass, seized by the collector as forfeited to the United States, under section 12 of the "Act to amend the customs-revenue laws, and to repeal moieties," passed June 22, 1874 (18 Stat., 186).

Here is what the court says. The case is Boyd *v.* United States (116 U. S., 616):

The information, though technically a civil proceeding, is in substance and effect a criminal one. As showing the close relation between the civil and criminal proceedings on the same statute in such cases, we may refer to the recent case of Coffey *v.* The United States (ante, 436), in which we decided that an acquittal on a criminal information was a good plea in bar to a civil information for the forfeiture of goods arising upon the same acts. As, therefore, suits for penalties and forfeitures incurred by the commission of offenses against the law are of this quasi-criminal nature, we think that they are within the reason of criminal proceedings for all the purposes of the fourth amendment of the Constitution, and of that portion of the fifth amendment which declares that no person shall be compelled in any criminal case to be a witness against himself.

That was my contention, with this difference: I contended that the sixth amendment of the Constitution applied. Of course if it is a criminal proceeding, not only do the fourth and fifth amendments apply, but the sixth amendment applies. The sixth amendment reads as follows:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

If this is a criminal prosecution within the meaning of Article VI, you must confront the man with your witnesses.

The Supreme Court held in this case that it was a criminal prosecution. And at the end of the decision Justice Miller, with whom was the Chief Justice, concurring, said:

I am of the opinion that this is a criminal case within the meaning of that clause of the fifth amendment to the Constitution of the United States which declares that no person "shall be compelled in any criminal case to be a witness against himself."

If such a matter comes within the fifth amendment of the Constitution as a criminal case, it comes within the sixth amendment as a criminal case. And I suggest that the amendatory language does not cure the defect, because it still leaves and treats the action of forfeiture as a civil case.

In conclusion I want to say this: As I said before, this case, as I understand it—I gave the case to the junior Senator from New York—was tried below by the junior Senator from New York. The Senate will recollect that during the course of the discussion I asked the junior Senator from New York whether this was a criminal or a civil suit. He said that he did not know. He did not recollect, evidently, this case, which he himself tried.

I have finished, Mr. President. I desire to ask unanimous consent of the Senate to place the remarks I have made to-day at the end of the entertaining colloquy that occurred last Monday between the Senator from Rhode Island and myself, so as to amplify what I then said. I ask unanimous consent of the Senate to take that course. I think I have sustained the principles for which I am contending.

The VICE-PRESIDENT. Is there objection to the request? The Chair hears none.

Mr. ALDRICH. I should like to ask the Senator if he can suggest some other language than that?

Mr. RAYNER. I will tell the Senator what I would do. If the Senator will submit the matter to the Attorney-General, or anybody else, I will abide by the decision. But I really should not want to make an ex parte statement testimony in a case that the Supreme Court has held is a criminal case. I should not make this entry evidence. I should let the man be convicted or acquitted just as other people are convicted or acquitted—that is, on the testimony of the witnesses who confront him—under the Constitution. Leave that clause out. There is no trouble in producing the testimony against him.

I give it as my opinion now, after a careful examination—and the Senate can take it for what it is worth—that you can not in a criminal prosecution throw upon a man the burden of his innocence. I therefore suggest leaving that clause out of the law.

Mr. ALDRICH. I will say to the Senator from Maryland that this subsection has already been agreed to in the form in which it now stands. But in the conference committee the managers on the part of the Senate will take the matter very seriously into consideration, and will confer with the Attorney-General with reference to it, and make such amendments as may seem best under all the circumstances.

Mr. CLAPP. Mr. President, I should like the Senator from Rhode Island to answer a question. I confess that I never had occasion to examine the customs laws so far as they relate to the punishment of offenders. I should like to ask the Senator if it is his understanding that for twenty years, under the laws of this country, the findings of a board of appraisers was evidence, and made evidence by law, of fraud in a proceeding criminal in its character instituted against the importer?

Mr. ALDRICH. The provision of law to which the Senator alludes is largely a reproduction of the law as it existed prior to 1890. It has always been the law so far as I know. I think it has been ever since 1789.

Mr. BAILEY. Mr. President——

Mr. ALDRICH. Allow me to finish my sentence. Where the appraisers found that goods were undervalued to a certain extent, it was provided that that finding should be prima facie evidence of fraud. That, I think, has been true under all the customs laws from the beginning of the Government.

Mr. CLAPP. That would be true and would be legal as against the claim of the claimant against the Government, because the Government unquestionably could impose any condition it saw fit; but if it has been the law that such a finding should be taken as presumptive evidence of fraud in a proceeding instituted by the Government, then it certainly is time that we changed the law.

Mr. BAILEY. I wanted to say that the Senator from Minnesota in his question at first asked if it had been considered as presumptive evidence of guilt. Of course, if he means in a criminal proceeding, no.

Mr. ALDRICH. No.

Mr. CLAPP. That is what I meant.

Mr. BAILEY. It can not, in my judgment, be used in that way safely, although I say that with some reluctance, in view of a recent line of decisions in some of the States which have been trying to enforce their prohibition laws. It has been held that the mere possession of liquor was prima facie evidence that it was held for the illegal purpose of selling it. But that is going a long way.

Mr. CLAPP. Yes; but that does not go so far as this provision goes.

Mr. BAILEY. I think if this provision be read carefully—I have read it hastily here—it will be seen that the farthest it can be used is in proceeding to forfeit.

Mr. ALDRICH. That is what I was going to say. That is the precise question. It is used for the purpose of working a forfeiture, and nothing else.

Mr. CLAPP. The Senator from Rhode Island says that this is a substantial copy of existing law. I want to point out that a very little difference in language might make a very great difference in legal effect. The provision contains this language:

And in any legal proceeding that may result from such seizure—

A legal proceeding that might result from such seizure might be a criminal prosecution. If the Senator from Rhode Island is right about that, then the law is good, but if the Senator from Maryland is correct——

Mr. ALDRICH. That is my understanding of the law.

Mr. CLAPP. The law is absolutely void.

Mr. RAYNER. I should like to ask the Senator from Minnesota if a criminal proceeding is not a legal proceeding?

Mr. CLAPP. That is what I have stated.

Mr. ALDRICH. It may be a legal proceeding, but it is not a legal proceeding for the forfeiture of goods.

Mr. CLAPP. This is not limited to proceedings for forfeiture.

Mr. ALDRICH. It relates to forfeiture, and nothing else.

Mr. CLAPP. No; if the Senator will just permit me a moment, it reads:

And in any legal proceeding that may result—

Not for forfeiture, but—

from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud.

Then it goes on—

And the burden of proof shall be on the claimant to rebut the same.

When? Clearly only when the claimant is seeking a recovery. If the Senator from Maryland is correct, that in any legal proceeding this shall be presumptive evidence of fraud, I think anyone will agree with me that that would not be a valid enactment.

Mr. HEYBURN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Minnesota yield to the Senator from Idaho?

Mr. CLAPP. With pleasure.

Mr. HEYBURN. I think that is the existing law, and has been for nineteen years. I have just compared the language.

Mr. ALDRICH. It is the same language.

Mr. HEYBURN. Take page 5 of the existing law. As I have it here, that provision——

Mr. ALDRICH. Not a single word or syllable is changed from the law as it has been since 1890.

Mr. HEYBURN. As I have stated, I have just compared the language.

Mr. CLAPP. I want to say that the only escape from it would be that the language, taken together, would not make this evidence in a proceeding against the claimant on the part of the Government.

Mr. ALDRICH. I was one of those who prepared that enactment originally, and I certainly never had any such idea or contemplated that it could be possibly construed in that way. It was only intended, of course, to cover procedure for forfeiture.

Mr. RAYNER. One line will amend it, and why not do so?

Mr. HEYBURN. It has never been construed as suggested by the Senator from Minnesota [Mr. CLAPP]. The construction that the courts have placed upon it is that when an independent criminal proceeding is commenced, it proceeds under the ordinary rules of evidence; but this is only as applied to the provisions of this bill.

Mr. BAILEY. The Senator from Maryland and the Senator from Minnesota are both right, if those words can be construed to include a criminal procedure.

Mr. HEYBURN. They have not been so construed.

Mr. BAILEY. That they have not been so construed is the only way to save the provision from the objection which the Senator from Maryland and the Senator from Minnesota both make to it. Of course, if the langauge has been construed, then it is well enough to leave it; but if it has not been construed, except by no attempt to enforce it in criminal cases, I think, as a matter of proper caution, we ought to confine it so that it could not be invoked, or attempted to be invoked, in a criminal proceeding.

Mr. HEYBURN. The cases are not tried in the same court.

Mr. BAILEY. I understand that.

Mr. HEYBURN. The criminal proceedings are tried in a court having its own independent rules of procedure.

Mr. RAYNER. Are there any cases on the subject, I ask the Senator from Idaho?

Mr. HEYBURN. I have sent for my notes on the criminal code which we enacted. I may probably be able to refer the Senator to some authorities. I do not care to speak offhand, although I may know them.

Mr. ALDRICH. Mr. President, I should like to say to the Senator from Texas that if there is any change that he can suggest that will make the language perfectly clear, I should be glad to have him do so. There never was such an intention as has been expressed here and no such purpose.

Mr. BAILEY. Yet to anybody reading the language for the first time it would naturally occur that it might be broad enough to include that. But, Mr. President, I have no hesitation in saying that I know probably less about criminal law than any lawyer on this floor. I have never practiced it.

Mr. SUTHERLAND. I have just a word to say, and then I will yield the floor. The Senator from Maryland [Mr. RAYNER] would be entirely correct if this provision should be applied to criminal cases. I do not think there could be any doubt about that at all, because under the Constitution every person accused of crime is entitled to be confronted by the witnesses against him; but I think it is quite clear, from a consideration of the proviso, that it does not apply to a criminal case, and can not by any sort of construction be held to apply to a criminal case. After the preliminary portion, the language of the proviso is:

Such entry shall be held to be presumptively fraudulent, and the collector of customs shall seize such merchandise and proceed as in case of forfeiture for violation of the customs laws—

By that phrase the collector of customs is directed in this event to proceed as in the case of forfeiture for the violation of the customs laws—

And in any legal proceedings that may result from such seizure.

Plainly and manifestly referring to the preceding clause, which has reference to an action for forfeiture. So that it seems to me there is no need of any amendment. It is perfectly apparent that the provision only applies to that sort of action.

Mr. McCUMBER. Right there I want to call the Senator's attention to the fact that there is no criminal procedure that originates or could originate from the seizure.

Mr. SUTHERLAND. No.

Mr. McCUMBER. No crime is based upon anything that pertains to the seizure, hence no criminal procedure would arise from that seizure.

Mr. SUTHERLAND. The Senator is right about that. The phrase "in any legal proceeding that may result from such seizure" plainly has reference to the particular legal procedure which is mentioned in the clause preceding.

Mr. ROOT. Mr. President, the Senator from Utah has made the precise suggestion which I rose for the purpose of making, that the only legal proceeding which will arise from the seizure will be a claim.

Mr. RAYNER. I should like to ask the Senator from New York whether a proceeding for the forfeiture of a man's property is a criminal procedure?

Mr. ROOT. It may be, and it may not be.

Mr. RAYNER. If it may be, then the clause is illegal.

Mr. ROOT. But in contemplation of law, when there has been a violation, upon which a forfeiture is visited, the title vests immediately in the Government, and all persons claiming the property are put to their affirmative proceeding to secure possession of it. It has been time out of mind, it has always been, so far as I know, the practice of this Government to determine the rules of evidence upon which such an affirmative proceeding against the officers of the Government could be maintained, and to impose the burden of proof upon the claimant.

The language that is referred to here is taken directly from the act of 1890. It does not change that language, and that language in turn simply states the law as it had existed before, so far as I am able to ascertain it; and it is by no means an

isolated case. There are many instances in which similar provisions of law establishing rules of evidence have been enacted by the Congress of the United States.

For example, under the old smuggling statute, the law which makes the importation of goods contrary to law a criminal proceeding and creates liability to forfeiture of goods or forfeiture of double value, the provision was, and I dare say still is, that the possession of goods which have been imported contrary to law shall be presumptive evidence of a knowledge on the part of the possessor that the goods which he possesses were imported contrary to law. It will be seen that that provision, under which the person's goods may be forfeited, or he may be sued for double their value, throws the burden of proof upon him to show that he had not knowledge of their importation contrary to law. I refer to that as an analogous exercise of power, because I know the law in question went to the Supreme Court of the United States in the case of United States *v.* Claflin.

While I am on my feet let me first congratulate the Senator from Maryland [Mr. RAYNER] on the perfectly beautiful time he has been having. I have never known a more safe or more sane Fourth of July, and I have never known an address upon this inspiring day which gave more delight and joy to the auditors. And let me follow that heartfelt expression of appreciation and gratitude by a simple statement of what I understand this proposed law to do.

Prior to the year 1890, and still, the decision of the appraisers was and is, but for the extension of opportunity afforded by the proposed law, final upon the question of value. That does not come in question. Prior to 1890 the decision of the collector upon the classification of goods, which determined whether they were to be classified under a clause fixing one rate of duty or another clause fixing another rate of duty, was final so far as the question between the Government and the owner or importer was concerned. The importer was bound to pay the duty; but he could pay it under protest, and could then sue the collector individually to recover back any excess which he deemed that he had been obliged to pay over the lawful rate. Before 1890, as I said, those suits against the collector were tried in the circuit court of the United States as jury cases. Originally the recourse was only against the collector individually. It did not concern the Government. The suit was not brought because the collector had been acting under the law, but was based upon the theory that he had been acting without the law; that he had been violating the law. And in order to relieve the collectors from the unfortunate consequences of errors in judgment, Congress provided that upon a certificate of good faith from the court, judgments against collectors should be paid out of the Treasury of the United States.

In 1890 Congress provided that there should be an appeal to the Board of General Appraisers to pass upon the question of classification, and a review upon the question of classification by the circuit court of the United States. That was the first time the importer had an opportunity to go up beyond the collector himself and get a review of that question.

Section 15 of the act of 1890 provided:

> That if the owner, importer, consignee, or agent of any imported merchandise, or the collector, or the Secretary of the Treasury, shall be dissatisfied with the decision of the Board of General Appraisers, as provided for in section 14 of this act, as to the construction of the law and the facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, they or either of them may, within thirty days next after such decision, and not afterwards, apply to the circuit court of the United States within the district in which the matter arises for a review of the questions of law and fact involved in such decision. * * * Thereupon the court shall order the board of appraisers to return to said circuit court the record and the evidence taken by them, together with a certified statement of the facts involved in the case and their decisions thereon, and all the evidence taken by and before said appraisers shall be competent evidence before said circuit court.

It appears that under that provision for the past nineteen years these questions have been passed upon by the circuit court of the United States reviewing the action of the Board of General Appraisers upon a certified record of the testimony before the Board of General Appraisers and a certified statement by that board as to the facts. A year ago there was an amendment which authorized the court to send the case back for the taking of further testimony if they did not find that the facts were sufficiently before them upon the evidence returned in the first instance.

That seems to be the present state of the law and the practice, and it seems to have gone substantially unchallenged for the past nineteen years. What this bill does is not to create a new kind of practice, but to transfer from the circuit court of the United States to a new customs court the same jurisdiction to pass upon the questions of classification and rate of duty in the same way, upon evidence sent to them exactly as it is sent to the circuit court of the United States.

Mr. RAYNER. May I interrupt the Senator there?

Mr. ROOT. Certainly.

Mr. RAYNER. I will ask the Senator from New York where there is any such provision as that in this law? I have not seen it.

Mr. ROOT. In which law; the new law?

Mr. RAYNER. Yes; the new law.

Mr. ROOT. Look at page 42 of the law, beginning with line 9. You will find there an exact reproduction of section 15 of the act of 1890. It reads:

> If the importer, owner, consignee, or agent of any imported merchandise, or the collector or Secretary of the Treasury, shall be dissatisfied with the decision of the Board of General Appraisers as to the construction of the law and the facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, or with any other appealable decision of said board, they, or either of them, may, within sixty days next after the entry of such decree or judgment, and not afterwards, apply to the United States court of customs appeals for a review of the questions of law and fact involved in such decision.

Mr. RAYNER. May I ask the Senator another question?

Mr. ROOT. Certainly.

Mr. RAYNER. Further over I find this language, "and all the evidence taken by and before said board shall be competent evidence." There is no doubt about that. Does that preclude this court from taking any other evidence at all? Look at lines 7 and 8, on page 43. That evidence is competent evidence; but it does not preclude the parties from giving any other evidence before a court of review, does it?

Mr. ROOT. That is the precise language of the act of 1890.

Mr. RAYNER. It may be.

Mr. ROOT. These words also occur in the act of 1890.

Mr. RAYNER. I can well understand, if the Senator will allow me, why that evidence should be competent evidence, because both parties were present, and were perhaps represented by counsel, and everything of the kind. I do not know what the practice has been under the act of 1890; but suppose there should be some newly discovered evidence of the highest importance which had come to light after the decision of the appraisers. The Senator from New York will not contend that before this court of customs, which is to be the final court, I could not produce a witness that would absolutely change the decision of the appraisers?

Mr. ROOT. No. It appears, however, that even before the passage of this act of 1908 the courts had adopted the practice of sending cases back to the Board of General Appraisers. I find in the case of Dieckerhoff, in Forty-fifth Federal Reporter, at page 235, that the district attorney and the counsel for an importer united in an application to the circuit court to send the matter back in order to get a further return from the Board of General Appraisers. The same thing was done in the case of Blumlein and a number of other cases in the same volume, at page 236. The law then goes on, using the same words as the act of 1890, to declare that—

> The decision of said court of customs appeals shall be final, and such cause shall be remanded to said Board of General Appraisers for further proceedings to be taken in pursuance of such determination.

That, again, merely reproduces the provisions of the act of 1890, substituting the court of customs appeals for the ordinary circuit court. I apprehend that the question of constitutionality does not arise here upon the terms of the proposed statute. It seems to me there is no doubt whatever that it is competent for the Government in all proceedings as between itself and an importer to say that the decision of such a tribunal shall be final, and end the matter there. That is essential to the efficacy of proceedings for the collection of taxes.

While it is a subject I have not examined, there may still be, outside of the limits of this legislation, by force of the operation of the Constitution, a right on the part of the importer or the owner to bring suit for the recovery of money exacted from him without warrant of law, just as he could bring suit under the old act of 1883 when money had been exacted from him without warrant of law by the collector. I do not think, however, that that question is one which arises upon this statute.

Mr. RAYNER. Would he not be entitled to a jury trial in a case of that sort?

Mr. ROOT. Undoubtedly he would.

Mr. RAYNER. If you will give him a jury trial under this amendment, I will withdraw my objection.

Mr. ROOT. But this amendment does not relate in any way whatever to that proceeding.

Mr. RAYNER. Let me ask the Senator from New York—because this is an entirely different argument from that conducted by the Senator from Rhode Island, and we have gotten more in two minutes from the Senator from New York than we have from all these interruptions of the distinguished Sen-

ator from Rhode Island—whether this does not make the decision final?—

The decision of said court of customs appeals shall be final.

I can talk now so that we can understand each other, because the Senator from Rhode Island would not understand this at all. If this decision is final, could it not be pleaded as res adjudicata against any suit that might be brought?

Mr. ROOT. That may be. I say I have not examined the question. It may be, however, that it would be held to be final, just as the decision of the collector before was held to be final as between the Government and the importer. This law does not seem to me to carry the finality of the decision of the proposed customs court any further than the old law carried the finality of the decisions of the collector.

Mr. RAYNER. Then let me ask the Senator another question, because I am quite sure we want to have a law that is valid. What I am after is a jury trial at some stage of the proceedings. In order to avoid all question, what is the objection to putting into the law a provision that after the decision of the court if the party aggrieved wants a jury trial upon the question of fact, he can go into the circuit court of the United States, just as he can go there now and could do under the act of 1890?

Mr. ROOT. The Senator must not ask me that question, for this is not my law.

Mr. RAYNER. No; I know the Senator from New York never drew a law like this.

Mr. ROOT. Personally, I am not in favor of having a new court. I do not oppose it, however, because gentlemen more familiar than I am with the present course of administration of the customs laws think it is necessary. Nevertheless I do not become its advocate; I merely yield to their judgment. So while I am willing to aid the Senator's Roman holiday in any way within my power, he must not ask me a question about what should or should not be done.

Mr. RAYNER. The Senator from New York certainly does not yield to the legal judgment of the Senator from Rhode Island. That would not be a legal holiday.

Mr. ROOT. My understanding is that the Senator from Maryland regards the opinion of the Senator from Rhode Island as being entirely a legal holiday.

Mr. RAYNER. I regard it as an illegal holiday.

Mr. HEYBURN. Mr. President, there should be no misunderstanding of the proposition submitted by the Senator from Maryland. His contention, as I understand it, is that in being deprived of the right to trial by jury these parties are deprived of a constitutional right. I understand that to be the burden of his objection, aside from the finality of the judgment.

All through the laws of this country, and all through its history, Congress has been making just such provisions. Wherever a controversy arises between the Government and one of its citizens as to whether or not the citizen has complied with the provisions of a law under which he may claim something from the Government, Congress has exercised the right to provide a tribunal to limit or prescribe the manner of trial. The case of the public lands is exactly in point. There the party makes an application for a patent to land. Another party files what is known as an "adverse." Congress has said that the case shall then be transferred to the court and tried under the ordinary rules of procedure. But Congress also took the liberty to say that the party should not be entitled to a jury trial. Even though the case involves every question as to character that this one involves, Congress says the party shall not have a jury trial—or the Supreme Court, in interpreting the act of March 3, 1881, has said so, and it has repeated itself since.

That is exactly in point on the question of a jury trial, because the court put it upon the ground that these are special proceedings. The right of action is derived from an act of Congress in regard to an extraordinary proceeding, and it is within the power of Congress to stop the trial at any point or to prescribe any limitations during the trial. Then the court says that the decision of an intermediate court shall be final; but, just as in a customs case, I imagine, if the intermediate court has violated the fundamental principles of law, you can apply to the Supreme Court of the United States for a writ of certiorari to bring up the proceeding for review. Of course that is not a right. That is a privilege the granting of which is discretionary with the court, and the court is governed only by the peculiar conditions and circumstances of the case.

That is an illustration that this proceeding is not extraordinary, and does not stand alone. I can cite a dozen such proceedings, special in their character, in the public laws of the United States, some of them decided finally in the lower court and others in the court next above, and so on; but always, of course, with the right to ask the highest court in the land to bring up the proceedings and review them, to see whether or not, first, the court had jurisdiction——

Mr. RAYNER. Will the Senator from Idaho yield to me?

Mr. HEYBURN. Yes.

Mr. RAYNER. There is no doubt about those cases and that law. But what possible similarity is there between that line of cases and a case that involves the forfeiture of a man's property and his liberty?

Mr. HEYBURN. It does not involve his liberty.

Mr. RAYNER. I beg the Senator's pardon. If a man makes a false entry he goes to prison.

Mr. HEYBURN. He does that in the land cases; but he does it in another court.

Mr. RAYNER. Where is there any such case? If the Senator has such a case, I should like to see it; and upon its production I will withdraw every word I have said. The forfeiture of a man's property is a criminal proceeding. It is one of the severest proceedings known to the common law.

Mr. HEYBURN. Let me answer that argument right there.

Mr. RAYNER. Just let me finish the sentence. You not only forfeit the man's property but you send him to prison. Where is there a case in the United States that says you can do that without giving a man, in the first place—mind you, in the first place—the right to a jury trial to determine the question of classification? And, in the second place, where is there a case which says he can be convicted upon the ex parte statement of a collector? If there is any such case, I should like to have it.

Mr. HEYBURN. I could give the Senator cases directly in point. For instance, the issues in a land case may be, and often are, as to whether or not a man has forfeited rights which were well established in him.

In many cases, perhaps in a large percentage of mining cases, the question is, "Has he forfeited some right which he had under the general law?" The Government determines that he has or has not forfeited the right. That is a determination of forfeiture. It is made in a civil proceeding. If he has forfeited his right, and has made false affidavits or has given false testimony, he is taken into another court, and there punished for the crime. The forfeiture does not necessarily involve the determination of the grade of the crime or its character. It is merely a declaration of forfeiture. The lands revert to the Government of the United States. The forfeiture is then complete, and the criminal prosecution does not arise out of the fact that he has suffered a forfeiture. It arises out of the manner in which he has undertaken to defend an unrighteous claim.

Mr. RAYNER. Mr. President, before the Senator sits down, I should like to ask him whether there is any proceeding of that sort where a man can be convicted upon an ex parte affidavit? That is what I want to know.

Mr. HEYBURN. No; and neither could that be done in these customs cases, because when he is in the criminal court he has certain rights that the Constitution gives him, and he is not tried upon affidavits; he is tried upon testimony.

Mr. RAYNER. I beg the Senator's pardon. If there is no testimony produced—and I want to call the Senator's attention to this—the man is convicted on the ex parte statement of a collector.

Mr. HEYBURN. I know of no such law, and there is no such decision. I have had occasion to review the decisions of the courts on that line. I undertake to say there is no decision recorded in which the court permitted conviction on forfeiture without trying the criminal case upon the facts.

Mr. RAYNER. This proposed law says that he shall be found guilty unless he produces testimony in his favor.

Mr. HEYBURN. Will the Senator kindly point me to the exact words on which he bases that statement? Give me the page and line.

Mr. RAYNER. On page 15:

And in any legal proceeding that may result from such seizure, the undervaluation as shown by the appraisal shall be presumptive evidence of fraud and the burden of proof shall be on the claimant to rebut the same.

There can not be anything plainer than that.

Mr. HEYBURN. That only goes to the question of measuring the weight of the evidence; it does not foreclose him.

Mr. RAYNER. But it throws on him the burden of proving his innocence, which you have no right to do under the Constitution of the United States.

Mr. HEYBURN. That is not a criminal case.

Mr. RAYNER. What is the forfeiture?

Mr. HEYBURN. We have the same presumption in the land laws.

Mr. RAYNER. Is not forfeiture a penal case?

Mr. HEYBURN. Forfeiture is not a case at all. It is simply the thing upon which a case may be based. Suppose, for instance, a man has made a double homestead entry; the same presumption arises against him there, because he is presumed to know the law. He has made two entries when he can make but one, and there is a presumption there of criminal intent in making a second entry, but he can show circumstances that would exonerate him from that presumption and acquit him.

Mr. SUTHERLAND. The Senator from Maryland insists, as I understand it, that the forfeiture of goods is a criminal proceeding?

Mr. RAYNER. Penal.

Mr. SUTHERLAND. A penal proceeding. At common law the forfeiture of goods in some instances may operate as a punishment for crime, but I never have understood that the action on the forfeiture of goods was itself a criminal action. We bring a civil action——

Mr. BAILEY. Not a criminal action, but it is a penal action, and stricter proof is required and stricter proceeding required than in an ordinary act of forfeiture. The Senator from Maryland did once call it criminal procedure, but he corrected himself and described it as it is.

I think that really the only difference between the Senator from Maryland and the other Senators is as to the effect of the words "in any legal proceeding." I believe it satisfies me, and I know it would satisfy the Senator from Maryland, if we may be sure that these ex parte affidavits were not to be used to jeopardize any citizen's liberty. Really the whole controversy revolves around whether that is true or not. If those in charge of the bill, either by amendment or by the show of construction, can satisfy us on that point, I think that would be the end of it.

Mr. FLINT. Let me make a statement. It is the intention of the committee to cover just what the Senator from Texas has stated, and not to include a criminal proceeding in this procedure.

Mr. RAYNER. If there is not any objection to putting that in the bill, it settles this whole business.

Mr. SUTHERLAND. Let me ask the Senator from Texas a question before he enters into negotiations with the committee about this matter. The Senator from Texas speaks of an action before the courts as being a penal action. I think he is hardly accurate in making that description. It is true the law required greater evidence in an action of that character. That was because of the maxim that forfeitures were not favorites of the law. But I do not think it is strictly accurate to speak of an action to forfeit as a penal action.

Mr. BAILEY. The Senator will agree that there are three kinds, the civil, criminal, and the penal acts. The action to enforce a forfeiture is not a criminal action, nor is it a civil action; it is a penal action. Although I do not pretend to much knowledge of these matters, I think the Senator will find upon an examination of the books that the division is in the three classes I state—civil, criminal, and penal.

Mr. BORAH rose.

Mr. BAILEY. I may be wrong. I see that the Senator from Idaho [Mr. BORAH] is on his feet and is smiling. I am not sure whether he is laughing at me or whether he agrees with me.

Mr. BORAH. I am not going to laugh at the Senator at any time.

Mr. BAILEY. I hope I find the Senator agreeing with me, then.

Mr. BORAH. My opinion is that a forfeiture is a civil action of a penal nature.

Mr. BAILEY. They sometimes call it a quasi criminal action.

Mr. SUTHERLAND. The Senator from Texas will agree with me that an action for forfeiture may be brought by one individual against another upon a contract.

Mr. BAILEY. That is a forfeiture of what was stipulated between them.

Mr. SUTHERLAND. Certainly.

Mr. BAILEY. On this kind of a case I can not analyze the nature of it, and I think Senators will agree with me. I admit my ignorance of these matters. I was never employed in half a dozen criminal cases in my life. I found pretty early that it was rather difficult for a man to practice criminal law without engaging in criminal practice, and I sought to eschew it.

In this very case the purpose of the Government is to enforce forfeiture as a part of the punishment for a given offense. If that does not constitute almost a criminal, and certainly a penal, action, I do not know how to define it.

Mr. CARTER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Utah yield to the Senator from Montana?

Mr. SUTHERLAND. I should like to finish my statement, and then I will yield, if the Senator will wait a moment.

Mr. CARTER. I will forego the suggestion for the time being.

Mr. SUTHERLAND. If the Senator from Maryland will give me his attention for just a moment——

Mr. RAYNER. The Senator is speaking of a contractual forfeiture. I submit to leave that out of the question. I ask the Senator if this is not a qui tam action?

Mr. SUTHERLAND. Just at the moment I can not answer the question.

Mr. RAYNER. It is a qui tam action. I might have left out the word "criminal." We have a penal statute under which there is a qui tam action in my State. I do not know how it is in other States. I have brought three or four suits under it.

Mr. SUTHERLAND. It is certainly not a criminal action, so far as to come before a jury. If the Senator from Maryland will give me his attention for a moment, I believe I can convince him that the phrase which is used in reference to criminal proceeding that may result from seizure can not possibly have any application to any criminal proceeding. The Senator will observe, in the first place, the following language is used:

> And the collector of customs shall seize such merchandise and proceed as in case of forfeiture for violation of the customs laws, and in any legal proceeding that may result from such seizure.

Manifestly the phrase "legal proceeding that may result from such seizure" has reference to the legal proceedings that are referred to in the clause immediately preceding. As indicating that, if the Senator will follow on, he will see that it proceeds:

> The undervaluation as shown by the appraisal shall be presumptive evidence of fraud, and the burden of proof shall be on the claimant to rebut the same, and forfeiture shall be adjudged unless he shall rebut such presumption of fraudulent intent by sufficient evidence.

Mr. BAILEY. I suggest to the chairman and the members of the committee that what will satisfy the Senator from Maryland entirely is that we will insert, after the words "any legal proceeding," the words "not of a criminal character."

Mr. ALDRICH. That is perfectly satisfactory.

Mr. RAYNER. I will accept that.

Mr. ALDRICH. That is the clear intention.

Mr. RAYNER. I will accept it.

Mr. BAILEY. That settles it.

Mr. BORAH. Mr. President, I am not going to discuss the constitutionality of the act. I shall examine it with that in mind. I think it is unfortunate that it is constitutional. I look upon the proceedings for the collection of the tax as coming under entirely different rules of law than those in the case which we have been discussing for the last hour.

Mr. President, as it is undoubtedly to be presumed that this measure will become a law in some form, I want to call attention to some features of it I think worthy of the consideration of the committee before it is finally passed.

In the first place, on page 39, beginning with line 15, the act provides that this customs court of appeals "shall always be open for the transaction of business, and sessions thereof may be held annually or oftener by the said court in the several judicial circuits at the following places." Then it provides for a roving court from Boston to New York, Philadelphia, Baltimore, New Orleans, Galveston, Chicago, Seattle, Portland, and San Francisco.

It occurs to me that if it is to be a court in any sense of the term and become a permanent part of our judicial system, it ought not to be in the nature of a roaming commission. It ought to have at least one or two established points for the purpose of holding its sessions.

But that leads up to another suggestion, where it says that "any three of the members of said court shall constitute a quorum." Is it the understanding of the committee, if three constitute a quorum, two agreeing in opinion, that opinion shall be the opinion of the entire court, and that the minority shall establish the opinion for the majority of the court? When you have a court composed of five, it seems to me it would be a rather remarkable condition to prevail if two of the members may render an opinion which is valid.

Mr. FLINT. It must be a unanimous opinion. If the first have failed to agree, then it shall be a decision of the full court of five judges.

Mr. BORAH. That is a portion of the act which I have not been able to find. To what provision does the Senator refer? I went through it with a view to finding whether that was true, and I was unable to find any provision which would annul the effect of the provision upon page 40, lines 6 and 7. If that stands alone, undoubtedly less than a majority of the court could render the opinion.

Mr. FLINT. I have not read it since it was printed, and I can not turn to it.

Mr. BORAH. It is possible that the provision is in the act, but I have not been able to find it.

Mr. FLINT. It may have been omitted. It was a matter which was brought up, I will say to the Senator, after some discussion, and I called it to the attention of the committee. In glancing over it it appears that it was omitted. I am very glad the Senator has called attention to it because it is the intention of the committee that the decision shall be by three, and where an appeal is given it shall be by a majority of the court of five, so that the decisions shall be uniform throughout the United States.

Mr. BORAH. I understand that if it has been omitted it will be inserted.

Mr. FLINT. Yes, sir.

Mr. BORAH. I feel quite sure it has been omitted. I have not been able to find it.

Mr. BACON. I will thank the Senator from Rhode Island if he will accept the amendment which I propose to offer on the thirty-ninth page, inserting the word "Savannah" in the fifth circuit after the words "New Orleans." I will state the fact that the fifth circuit has, I think, twice as much seacoast as any other; in fact, I am sure of it. Unless it is the California circuit, I expect it has four times as much seacoast as any other circuit in the United States.

Mr. ALDRICH. I have no objection to that. It ought to come in after the word "of," in line 22, and before the words "New Orleans," so as to read, "cities of Savannah, New Orleans," and so forth.

The VICE-PRESIDENT. The Secretary will report the amendment.

The SECRETARY. On page 39, line 22, after the word "of" and before the words "New Orleans," insert the word "Savannah."

The amendment to the amendment was agreed to.

Mr. HEYBURN. I ask the chairman of the committee to accept an amendment, on page 23, by striking out the word "evidence," in line 1. I will say that that provision stands alone in legislation organizing and determining the power of courts. It is not in the law as it now exists. It allows the Board of General Appraisers, which is a minor court, to "establish from time to time such rules of evidence, practice, and procedure." The law as it stands now says they may establish from time to time such rules of practice and procedure. That is right, and Congress has never undertaken to come in to give a court the power to establish rules of evidence.

Mr. ALDRICH. Very well, strike out the word "evidence," in line 1, page 23.

The VICE-PRESIDENT. The Secretary will report the amendment to the amendment.

The SECRETARY. On page 23, line 1, strike out the word "evidence" and the comma.

The amendment to the amendment was agreed to.

Mr. SHIVELY. I offer an amendment on page 38, which I send to the desk.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. On page 38, line 2, strike out the word "ten" and insert the word "seven," so as to read:

Each of whom shall receive a salary of $7,000 per annum.

Mr. SHIVELY. Mr. President, I shall not discuss this amendment. In the light of other salaries paid, it requires no explanation. The bill fixes the salary of a judge of the proposed customs court at $10,000 per year. This court is to have jurisdiction over only a single line of cases. The United States circuit court has jurisdiction over a wide range of cases and a large variety of subject-matter. A United States circuit court judge receives a salary of $7,000 a year.

Mr. ALDRICH. I think the committee reached the understanding; I think the amendment has not been made; but the understanding was that the judges should be paid the same salary as the circuit judges.

Mr. McCUMBER. I think it is $7,500.

Mr. ALDRICH. It is $7,500, I think.

Mr. SHIVELY. In your last legislative, executive, and judicial appropriation act you appropriated salaries for 29 circuit judges at $7,000 each.

Mr. GALLINGER. That is right.

Mr. HEYBURN. We remember it. The Senate made it $7,500, but the House knocked it out.

Mr. KEAN. The House knocked it out.

Mr. ALDRICH. I am willing to accept the amendment to the amendment.

The VICE-PRESIDENT. The question is on agreeing to the amendment to the amendment.

The amendment to the amendment was agreed to.

The VICE-PRESIDENT. The question is on agreeing to the amendment as amended.

Mr. CLARK of Wyoming. I should like to make a parliamentary inquiry. It is whether the sections are segregated or to be considered separately.

The VICE-PRESIDENT. The amendment is considered as one amendment. It was offered as one amendment.

Mr. CLARK of Wyoming. There are distinct parts of the amendment. It occurred to me——

Mr. ALDRICH. They are all together as one symmetrical provision. It is all one section.

Mr. CLARK of Wyoming. It occurs to me that the proposition on the composition of the court is a different proposition from the other. I, of course, desire to follow the committee in the general scope of the amendment. I can not say that I am very heartily in favor of the court proposition. I should like to vote separately on it.

Mr. ALDRICH. Of course there is no objection to that; but I think the Senator from California has a long statement, which he is hesitating about making. I think the Senator himself, if he should hear the argument in favor of the question, would be as enthusiastic for it as the members of the committee are. I am quite sure of that. I hope the Senator will not ask for a division, because it is a part of a whole proposition, and if the Senator finds any objection to it——

Mr. CLARK of Wyoming. I should hate to vote on the whole proposition. I desire to state——

Mr. ALDRICH. I think, if the Senator will talk to the Senator from California and read some portion of the argument, he will have no hesitancy at all in supporting it.

Mr. BORAH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Wyoming yield the floor.

Mr. CLARK of Wyoming. I simply make the parliamentary inquiry, if it is intended as one amendment.

Mr. ALDRICH. It is.

Mr. CLARK of Wyoming. And it must be so acted upon. I very much regret I shall have to part from my support of the committee in this matter, because I can not vote for a court that absolutely takes the property and disposes of it and allows the disposition of it without an opportunity to appeal to some other tribunal.

Mr. BORAH. Do I understand it is the purpose of the committee to make any explanation in regard to the court?

Mr. ALDRICH. I think not. The matter has been very carefully considered by the committee, and we have given great attention to it. I feel perfectly certain that if the Members of the Senate should examine the question as carefully as the committee did there would be no vote in the Senate against it. It is not a question of partisan judgment at all. It has been considered by the committee, the Republicans and the Democrats alike. It is simply a question of the honest enforcement of the law. The committee, the officers of the custom-house, the officers of the Department of Justice, everybody, have agreed that this proposition is a necessity if we expect to have the prompt and honest enforcement of the customs laws.

Mr. GALLINGER. Mr. President, I rose to inquire of the chairman of the committee as to the present salary of the general appraisers. Is it $9,000?

Mr. ALDRICH. Nine thousand dollars.

Mr. GALLINGER. That is the present law?

Mr. ALDRICH. Yes; that is fixed by law.

Mr. NELSON. I simply desire to call attention to Rule XVIII. I think under that clearly the amendment is divisible and we have a right to a separate vote upon it.

The VICE-PRESIDENT. The Chair has not ruled that it is not divisible.

Mr. ALDRICH. I did not say it is not divisible.

The VICE-PRESIDENT. The Chair has not so ruled.

Mr. NELSON. We have a right to have a separate vote on the proposition relating to a court, as distinct from the other, if the Senator from Wyoming asks for it.

Mr. BACON. I desire to ask the Senator from Rhode Island a question. I had several inquiries by those who are interested as to section 11. I want to see if I am correct in my understanding of it.

Mr. ALDRICH. The Senate has modified that amendment to-day, I think, along the line suggested.

Mr. BACON. I have examined the amendment, and the question I want to ask the Senator is this: As thus modified there is practically no difference in the rule of appraisement from what there is now, except as to the classification of things where the foreign market value can not be readily ascertained.

Mr. ALDRICH. The Senator is quite right. I have no objection to that.

Mr. CLARK of Wyoming. I ask for a separate vote on sections 29 and 30.

Mr. ALDRICH. I ask for a vote on the other provisions together.

The VICE-PRESIDENT. The Chair calls the attention of the Senator from Rhode Island to the fact that the suggestion made by the Senator from Maryland [Mr. RAYNER] has not been acted upon.

Mr. ALDRICH. I will repeat the amendment as I understand it:

On page 15, after the word "proceeding," at the end of line 21, insert "other than a criminal prosecution."

The VICE-PRESIDENT. The Chair thinks the words suggested by the Senator from Maryland were "not of a criminal character."

Mr. ALDRICH. I prefer the language which I have indicated. After the word "proceeding" insert "other than a criminal prosecution."

The VICE-PRESIDENT. The Secretary will report the amendment to the amendment.

The SECRETARY. On page 15, line 22, after the word "proceeding," insert "other than a criminal prosecution."

The amendment to the amendment was agreed to.

Mr. WARNER. I wish to ask the chairman of the committee what has been done with the salary that was fixed in section 30. You reduce the salary of the judges to $7,000, and I find that the Assistant Attorney-General starts out with $10,000 a year.

Mr. ALDRICH. It was the intention of the Committee on Finance to take care of these matters in conference, but if Senators desire to have the proposed salaries reduced now I have no objection.

Mr. HEYBURN. The Assistant Attorney-General gets more than the judges.

Mr. WARNER. I have no special objection to that salary, but I dislike very much to vote for a measure which places the salary of the attorney of the court at $10,000 when the court is only paid $7,000.

Mr. ALDRICH. I have no objection to reducing the salaries of the attorneys to $7,000.

Mr. HEYBURN. Their salaries ought to be less than the salary of the judges.

Mr. NELSON. I would suggest that the Senator from Rhode Island agree to that amendment now.

Mr. ALDRICH. I will.

Mr. WARNER. On page 45, line 21, if you will strike out the word "ten" and insert "seven"——

Mr. HEYBURN. I would not make the salary the same as that of the judges. I would make it less than that of the judges.

Mr. WARNER. I would suggest that on page 45, line 21, to strike out the second word "ten" and to insert "six."

Mr. ALDRICH. Perhaps we had better make it $7,000.

Mr. GALLINGER. I suggest $6,500, and that the deputy assistant receive $6,000, which follows immediately.

Mr. ALDRICH. I adopt the suggestion of the Senator from New Hampshire, if that is satisfactory.

Mr. WARNER. What is that?

Mr. ALDRICH. To make the salary of the assistant attorney $6,500, and the salary of the deputy $6,000.

Mr. WARNER. I have no objection to that, but I do not know about the deputy being paid $6,000. He may possibly get a class of attorneys not worth that much. That is more than the United States attorneys are paid. I would suggest that the salary be fixed at $5,000.

Mr. ALDRICH. Then, make it $5,000.

Mr. WARNER. Very well.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. On page 45, line 21, it is proposed to strike out the words "ten thousand" and to insert "six thousand five hundred;" in line 24, before the word "thousand," to strike out the word "seven" and insert the word "five;" and in the same line, after the word "thousand," to strike out "five hundred."

The amendment to the amendment was agreed to.

Mr. GALLINGER. Now, as to attorneys——

Mr. WARNER. I have suggested another amendment. On page 45, line 25, after the last word, I move to strike out the word "six" and to insert the word "five;" and on page 46, line 1, to strike out "five" and insert "four."

The VICE-PRESIDENT. The amendment proposed by the Senator from Missouri will be stated.

The SECRETARY. On page 45, at the end of line 25, it is proposed to strike out the word "six" and to insert the word "five;" and on page 46, line 1, to strike out the word "five" and insert the word "four."

The VICE-PRESIDENT. The question is on the amendment to the amendment.

The amendment to the amendment was agreed to.

The VICE-PRESIDENT. The Senator from Wyoming [Mr. CLARK] asks for a separate vote on sections 29 and 30.

Mr. ALDRICH. I ask that the vote be taken first on the other sections.

The VICE-PRESIDENT. If there be no objection, the vote will first be taken on the rest of the amendment. The Chair hears no objection. The question is on agreeing to the amendment as amended, save sections 29 and 30.

Mr. BRISTOW. Mr. President, do I understand that that includes the whole proposition?

Mr. ALDRICH. Except the court provisions.

Mr. BRISTOW. I want to make an inquiry in regard to the matter of valuations. As I understand from reading it as hastily as I have been obliged to do, the ad valorem duties are assessed on the wholesale valuation in this country, instead of the valuation in foreign countries. Is that correct?

Mr. ALDRICH. No; it is not. The ad valorem rates are assessed upon the valuation in foreign countries, as they have been, except in cases when it is impossible to ascertain the foreign value.

Mr. BRISTOW. I misunderstood the Senator.

Mr. CULBERSON. Mr. President, before the vote is taken on section 29 I ask the Senator from Rhode Island if any amendment has been adopted fixing the qualifications of the members of the proposed court?

Mr. ALDRICH. No; it is not intended to fix any qualifications. Their qualifications will be the same, of course, as those for circuit court judges.

Mr. CULBERSON. The same as those for judges of any court of record?

Mr. ALDRICH. The same as those of judges of any other court of record, of course. No qualifications are fixed. The President has the whole field of selection open to him; and these judges have to be confirmed by the Senate the same as other judges.

Mr. CULBERSON. As suggested by Senators sitting in my rear, "the whole field" of what? Can a layman be appointed a member of this court under this bill?

Mr. ALDRICH. I suppose he could be; but it would be impossible to suppose that the President would appoint a layman. These judges are practically circuit judges of the United States; they have the same tenure of office, the same rights, the same privileges, the same duties and responsibilities as have circuit judges. They are appointed just as are the circuit judges. There is no attempt made to limit in any way, and no purpose to limit, the President in their appointment.

Mr. CULBERSON. What I wanted to know distinctly was whether anyone except a lawyer could be appointed a judge of this court under this bill? Is that the opinion of the chairman of the Committee on Finance?

Mr. ALDRICH. Certainly not. The President could, I assume, appoint a man to be Chief Justice of the Supreme Court of the United States who was not a lawyer, but it is impossible to suppose that the President would appoint such a man. There is no restriction in the law or the Constitution to prevent the President appointing anybody he pleases, and there is no restriction in this case; but, I say to the Senator, it is utterly impossible, from my standpoint, to conceive that the President would appoint any man a judge of this court except a first-class lawyer, a man who would be fitted to be the Chief Justice of the Supreme Court of the United States.

Mr. CULBERSON. While the Constitution of the United States does not fix any qualifications, except by implication, I think the statute as to judges does so. That is my recollection.

Mr. ALDRICH. I think not. I do not think there is anything in any statute that undertakes to say that lawyers only shall be appointed to judgeships.

Mr. CULBERSON. The construction, then, is that none but a lawyer can be appointed a member of this court?

Mr. ALDRICH. Absolutely. I think no one has ever had any idea for a moment that not only nobody but lawyers, but nobody but the very best lawyers, would receive such appointments.

The VICE-PRESIDENT. The question is on agreeing to the amendment as amended, save sections 29 and 30. [Putting the question.] The ayes have it; and the amendment as amended, save those sections, is agreed to.

Mr. LA FOLLETTE. Mr. President, I wanted to offer an amendment to section 11, but I have not perfected it, and will simply say that I shall offer it when the bill reaches the Senate.

I think the explanation made by the Senator from Rhode Island [Mr. ALDRICH] with respect to the valuation provision—that is, this new provision of section 11—is not correct, and that under that section very large increases are certain to be made in the rates. It is a fact that in the trade merchandise is not sold in the open market as it was many years ago, but it is sold largely through distributers. Therefore, when the valuation is sought to be predicated upon the usual market price in the wholesale market abroad, and a given article of import is not quoted or not sold usually in the open market, but is sold through distributers, then, under the provisions of this section, as I understand it, the wholesale market price here would be substituted as the basis of valuation upon which the duty would be assessed.

I will not take the time of the Senate to discuss that now, but will look into the matter more carefully; and I will say that if I find that I have interpreted it correctly, I shall offer in the Senate an amendment to that provision.

The VICE-PRESIDENT. The question is on agreeing to sections 29 and 30 of the amendment as amended.

Sections 29 and 30 as amended were agreed to.

The VICE-PRESIDENT. The question now is on agreeing to the entire amendment as amended.

The amendment as amended was agreed to.

Mr. ALDRICH. I now offer certain amendments, which I send to the desk. I will say that they are but formal parts of the House bill. I think there will be no objection to any of them, and I think they will lead to no debate.

The VICE-PRESIDENT. The first amendment proposed by the Senator from Rhode Island will be stated.

The SECRETARY. It is proposed to add as new sections the following:

SEC. 5. That nothing in this act contained shall be so construed as to abrogate or in any manner impair or affect the provisions of the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on the 23d day of December, 1903, or the provisions of the act of Congress heretofore passed for the execution of the same.

SEC. 6. That the President shall have power and it shall be his duty to give notice, within ten days after the passage of this act, to all foreign countries with which commercial agreements in conformity with the authority granted by section 3 of the act entitled, "An act to provide revenue for the Government and to encourage the industries of the United States," approved July 24, 1897, have been or shall have been entered into, of the intention of the United States to terminate such agreements; and upon the expiration of the period when such notice of termination shall become effective the suspension of duties provided for in such agreements shall be revoked, and thereafter importations from said countries shall be subject to no other conditions or rates of duty than those prescribed by this act and such other acts of Congress as may be continued in force: *Provided*, That until the expiration of the period when the notice of intention to terminate hereinbefore provided for shall have become effective, or until such date prior thereto as the high contracting parties may by mutual consent select, the reduced rates of duty named in said commercial agreements shall remain in force.

SEC. 7. That whenever any country, dependency, colony, province, or other political subdivision of government shall pay or bestow, directly or indirectly, any bounty or grant upon the exportation of any article or merchandise from such country, dependency, colony, province, or other political subdivision of government, and such article or merchandise is dutiable under the provisions of this act, then upon the importation of any such article or merchandise into the United States, whether the same shall be imported directly from the country of production or otherwise, and whether such article or merchandise is imported in the same condition as when exported from the country of production or has been changed in condition by remanufacture or otherwise, there shall be levied and paid, in all such cases, in addition to the duties otherwise imposed by this act, an additional duty equal to the net amount of such bounty or grant, however the same be paid or bestowed. The net amount of all such bounties or grants shall be from time to time ascertained, determined, and declared by the Secretary of the Treasury, who shall make all needful regulations for the identification of such articles and merchandise and for the assessment and collection of such additional duties.

Mr. ALDRICH. I will say that this section is but a reenactment of the countervailing provisions of the existing law.

Mr. BACON. If the Senator will permit me, of course it is very difficult from the reading to gather the full import of the amendment. The Senator speaks of it as a countervailing duty. Would that affect the case, for instance, of the Standard Oil Company?

Mr. ALDRICH. No. In the first place, crude and refined petroleum in this bill are on the free list. It would not affect them, because this only applies to bounties.

Mr. BACON. It does not apply to duties?

Mr. ALDRICH. No; this does not apply to duties.

Mr. BACON. The term "countervailing" is used as to each——

Mr. ALDRICH. The word "countervailing" is used to this effect: Bounties were first put upon sugar, and the provision was used largely to cover the case of sugar. If Germany, for instance, should pay a bounty, as that country did, upon the exportation of sugar, the amount of that bounty would be added to the sugar duties in this country. It is a countervailing duty to that extent. It applies only to bounties paid by foreign governments for exportation, and equalizes conditions by imposing an amount of duty in this country equal to the bounty so paid.

Mr. BACON. Then, it does not reach any case where the article is on the free list?

Mr. ALDRICH. None whatever.

Mr. BACON. And where it is on the dutiable list in another country?

Mr. ALDRICH. Not at all. It only applies to articles that are on the dutiable list in this country, and adds to the amount of duty, it becoming a countervailing duty to that extent.

Mr. HEYBURN. I should like to ask the Senator if the provision applies to cases where the Government pays a bounty for the production of an article within its own borders, if that article is on the dutiable list in this country?

Mr. ALDRICH. Yes.

Mr. BACON. Articles on the free list?

Mr. ALDRICH. Articles in this country on the dutiable list.

Mr. HEYBURN. If an article is on the dutiable list in this country and the foreign country pays a bounty, that bounty is added to the duty?

Mr. SHIVELY. But, if the Senator will permit me, if it is on the free list in this country, the provision has no effect.

Mr. ALDRICH. It is not effective as to any article on the free list.

The VICE-PRESIDENT. The Secretary will resume the reading of the amendment. The reading has not been completed.

The Secretary resumed and concluded the reading of the amendment, as follows:

SEC. 8. That the produce of the forests of the State of Maine upon the St. John River and its tributaries, owned by American citizens, and sawed or hewed in the Province of New Brunswick by American citizens, the same being otherwise unmanufactured in whole or in part, which is now admitted into the ports of the United States free of duty, shall continue to be so admitted, under such regulations as the Secretary of the Treasury shall from time to time prescribe.

That the produce of the forests of the State of Maine upon the St. Croix River and its tributaries, owned by American citizens, and sawed or hewed in the Province of New Brunswick by American citizens, the same being otherwise unmanufactured in whole or in part, shall be admitted into the ports of the United States free of duty, under such regulations as the Secretary of the Treasury shall from time to time prescribe.

That the produce of the forests of the State of Minnesota upon the Rainy River and its tributaries, owned by American citizens, and sawed or hewed or mechanically ground in the Province of Ontario by American citizens, the same being otherwise unmanufactured in whole or in part, shall be admitted into the ports of the United States free of duty, under such regulations as the Secretary of the Treasury shall from time to time prescribe.

Mr. ALDRICH. I will say that we have added the provision in regard to the Rainy River. The Senate has already adopted the provision, and this merely provides for its location in this section of the amendment.

Mr. SHIVELY. If the Senator from Rhode Island will allow me to make an inquiry, do I understand the paragraph as read is the law at the present time?

Mr. ALDRICH. The first part of it, in regard to the St. Croix River and the St. John River, in Maine and New Brunswick, is in the present law. This provision is exactly as it stands in the law now. The provision in regard to the Rainy River was adopted by the Senate upon the motion of the senior Senator from Minnesota [Mr. NELSON] and is simply added to this paragraph to give it a place in the bill.

Mr. SHIVELY. That is, the addition applies to some other part of the Canadian border?

Mr. ALDRICH. Yes; it applies to the Rainy River between Minnesota and Canada.

Mr. SHIVELY. Do I understand that these logs are hewn on the Canadian side of the line?

Mr. ALDRICH. No; on the American side. The mills may possibly be on the Canadian side.

Mr. SHIVELY. Is the timber cut on the American side?

Mr. ALDRICH. It is cut on the American side.

Mr. SHIVELY. What is done on the Canadian side?

Mr. ALDRICH. In the case of the Rainy River proposition I think the mill itself is on the Canadian side.

Mr. CLAPP. The mill is on the Canadian side of the river.

Mr. SHIVELY. It is a mere matter of the location of the mill owned by citizens of the United States and sawing timber cut on the American side of the line?

Mr. ALDRICH. As a matter of fact, I think that mill is in the center of the river; but it is located so that it is technically within the jurisdiction of the Dominion of Canada.

Mr. MCCUMBER. I will say to the Senator that there are two mills in the Rainy River. One is on the Canadian side of the thread of the stream and the other on the Minnesota side, but the products are the products of the State of Minnesota.

The VICE-PRESIDENT. The question is on agreeing to the amendment.

Mr. HEYBURN. Mr. President, before voting on the amendment, I should like a little further information, because the provision might apply more widely. Does this mean that timber may be cut in bond on the other side of the line, and after it is brought on our side it comes into the market with any special advantages?

Mr. ALDRICH. No; it does not come into the market at all in the form of lumber. It has to be remanufactured and comes into this country in the form of pulp in this case.

Mr. HEYBURN. This, then, applies only to pulp?

Mr. ALDRICH. It must be made from the products of American forests.

The VICE-PRESIDENT. The question is on agreeing to the amendment.

The amendment was agreed to.

The VICE-PRESIDENT. May the Chair ask, Is it not necessary, then, to strike out the provision on page 224?

Mr. ALDRICH. That is simply a transposition. I ask the Secretary to make that transposition.

The VICE-PRESIDENT. In the absence of objection, the Secretary will make the transposition as requested.

Mr. ALDRICH. There are a number of the provisions of the House bill which the committee have not asked to have reinserted. They are provisions that are not necessary in a tariff law, and the committee have not thought it wise to encumber this bill with their reenactment. There are certain exceptions to that. For instance, the House adopted elaborate provisions in regard to drawbacks, which the Senate committee were not willing to accept. I believe myself that if the House provisions in this respect should be agreed to it would cost the Government many millions of dollars a year. I can not understand how the House could have agreed to them; but the House incorporated them in the bill. The Senate committee recommended that they be stricken out; they have been stricken out; and the committee are not in favor of their reinsertion.

Mr. BACON. I wish to ask the Senator a question on that point. It is extremely difficult to keep up with the details of this elaborate bill, especially in view of the multitudinous changes and modifications. I recall that early in the session there was an interchange of views—I have forgotten whether or not it was a public discussion—as to the proposition to permit the manufacturers who exported goods, where there had previously been an allowance of drawback upon the imported material, a further advantage, which would allow them in all cases of export to have a drawback upon the amount of material used whether it had been imported or not. Is there such a provision in this bill?

Mr. ALDRICH. We have stricken that provision out of the bill. The Committee on Finance are very much opposed to it.

Mr. BACON. I am very glad to know that.

Mr. ALDRICH. The effect of striking that out is to stand upon the drawback provisions of the present law. The Senator from North Dakota [Mr. MCCUMBER] has an amendment to the existing law, which he will offer, covering certain features of it; but with the exception of that amendment, the committee recommends that the present law be maintained.

Mr. BACON. That is limited to the amount of goods actually imported for the manufactured goods which are exported?

Mr. ALDRICH. And which can be identified under regulations.

Mr. BACON. I am opposed to the whole thing. I think it is a vicious principle myself. I do not believe that manufacturers ought to be allowed greater privileges to make goods for foreigners than they are allowed to make goods for our own people; but certainly to extend it to the point which had been recommended was extremely objectionable to me. I should like to see the whole thing stricken out.

Mr. ALDRICH. It is all stricken out——

Mr. BACON. They are still allowed a drawback upon goods which can be identified?

Mr. ALDRICH. The committee are in favor of the existing law in that respect. That is the reason for the striking out of the provisions of the House bill in this respect, leaving the existing law to stand.

Mr. BACON. That is the provision which I was glad was stricken out, because that does give the manufacturer an advantage when he is manufacturing for a foreigner that is denied to him when he is manufacturing for our own people. I think that absolutely indefensible.

Mr. ALDRICH. I do not know that it is necessary to go into any extended defense of the drawback system as it now exists, but I hardly agree with the Senator from Georgia.

Mr. MCCUMBER. I offer the amendment which I send to the desk. It agrees with the suggestion of the Senator from Georgia so far as two articles are concerned.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. It is proposed to add the following section:

SEC. 9. The drawback provisions of this act shall not apply to wheat, wheat flour, or flaxseed, or to the products or by-products of flaxseed.

The VICE-PRESIDENT. The question is on agreeing to the amendment.

Mr. CLAPP. Before the question is put, I should like to have inserted in the RECORD some letters which I send to the desk.

The VICE-PRESIDENT. Without objection, the letters will be printed in the RECORD.

The letters are as follows:

ARCHER-DANIELS LINSEED COMPANY,
Minneapolis, Minn., May 5, 1909.

Hon. MOSES CLAPP,
Washington, D. C.

MY DEAR SENATOR CLAPP: It did not seem necessary at the time I was in Washington to explain that there was a so-called "linseed-oil trust." This is the American Linseed Company, and it owns probably more mills than there are independent mills, and it is generally understood that the majority of its stock is owned by the Rockefellers.

When parties told me that they had been approached by a party from Michigan, seeking the approval of the drawback on exported oil cake, I felt sure that this party represented the American Linseed Company, and am more than confident of it now. The party that I have in mind is the manager of their Chicago mill. He has been in the East of late, and returns making almost public statements in Chicago that it would do no good for the independent mills to make protests; that the matter was all fixed with the Senate Finance Committee, and that hereafter the East would be the cheapest market for oil instead of the West.

The trade papers claim that custom-house officials are sending out word that there is no question but what the drawback clause in the flaxseed bill will be passed by the Senate.

It appeared to us that this confidence expressed by a party in the employment of the linseed trust as to the report which would be made by your committee would not be altogether pleasant reading for that committee, and we do not believe that he has any such assurance; but you will see from what he states that the position they took, as you were informed before your committee, did not fully and honestly state what they were after. They claimed to be asking for assistance to establish a new industry through the allowance of a drawback on exported oil cake, that of manufacturing linseed oil on the Atlantic coast to export.

The boasts they now make show their true position, that they wish this drawback on oil cake in order to manufacture cheaper oil, and put the independent mills of the West at a disadvantage, and in a position in which we could not pay the western farmer a price that would encourage his raising the flax as he had been for this country's consumption.

If your committee has not acted on this subject, and their representations continue the same, would it not be possible to grant what they claim they wanted; that is, conditions that would enable them to manufacture linseed oil on the Atlantic coast to export, and do this by allowing the drawback on both the cake and the oil that is exported, having been made from imported flax? But in no case shall the drawback be allowed on the cake exported unless the oil from this seed, or from other imported seed, should also be exported.

We do not object to the establishment of new industries on the Atlantic coast unless they seriously injure the agricultural and manufacturing industries now established in the West; and we are sure that you will appreciate that this injury will follow the allowance of a drawback on oil cake, unless there is a protecting clause, such as mentioned above, which is that the drawback will not be allowed on the oil cake unless the oil also is exported.

The largest American Company's mill is on Staten Island. They also have a large mill at Philadelphia. The lead trust have a large mill in Brooklyn, N. Y., and there are practically no independent mills on the Atlantic coast.

Yours, very truly, ARCHER-DANIELS LINSEED COMPANY.

JUNE 15, 1909.

Hon. P. J. MCCUMBER, *Washington, D. C.*

MY DEAR SENATOR MCCUMBER: We thank you for your favor of the 12th. There is a very delicate situation in the tariff bill as affecting flaxseed and linseed oil, especially through this drawback feature, that we have hesitated to mention to you; but we think, as representing the majority of the farmers who raise the flaxseed of this country, that it is proper you should know.

There are frequent years when the seasons are so backward on account of cold and rain that it is difficult for the farmers of North Dakota to plant the acreage of wheat they would like. Under such conditions—and this year is one of them—the farmers are enabled to sow flax with every prospect of maturing a crop for nearly a month later than they can safely sow wheat.

If the drawback on oil cake is allowed, it will reduce the duty on flax about two-thirds, and, in years of large foreign crops, permit the foreign flax to come in in a way to reduce the returns received by the American farmer.

The principal advantage to be derived from the importation of foreign flax, as against the consumption in this country of flax raised by our farmers, will be to the eastern manufacturers of linseed oil. There are two large companies—so-called "trusts"—the American Linseed Company and the National Lead Company, the American Linseed Company probably doing ten times the amount of linseed-oil business that the National Lead Company does, but both owning large mills on the Atlantic coast. For many years the controlling interest in stock of the American Linseed Company has been owned by Mr. John D. Rockefeller or his son. When they obtained this control they placed on the board their own men, and to-day the business of that company is in the hands of John D. Rockefeller, jr., and Mr. Frederick Gates, the

latter being Mr. John D. Rockefeller, sr.'s, representative on the boards of many of the companies which he controls.

It is now being claimed that not only will foreign seed be encouraged to be imported by the permission of this drawback on exported oil cake, but that this foreign seed will be permitted to be worked only within a limited distance of the point at which it has been imported. So that if the first effect is to reduce the price of American flax and discourage the American farmer, and thus deprive the western manufacturer of home-produced raw material, then this rule of manufacturing near the import point would cut out the western manufacturer from any possibility of receiving and working a small amount of this foreign seed for his western trade.

It has been so openly claimed by people who have represented the American Linseed Company and the National Lead Company that these features, so favorable to their companies, have been fully decided upon by the Finance Committee, that within a short time the values of these stocks on the public markets, especially of the American Linseed Company, have advanced enormously and very large sales have been made.

It is possible that the late owners of the American Linseed Company, under these conditions, have disposed of their control; but we believe that it is proper for you to call Senator ALDRICH's attention to the facts above named, that he will insist on a very thorough investigation, and we would be pleased to have called to Washington the people who have been urging this change, as well as the people who could speak for the northwestern farmers and independent linseed-oil crushers.

Yours, very truly, ARCHER-DANIELS LINSEED COMPANY.

Mr. CLAPP. With reference to this provision, I want to say that, so far as it applies to flax, I believe it is a very just one. The letters I have submitted bear upon that question. So far as it bears upon the products of wheat, I shall be constrained to differ with the Senator from North Dakota, and probably with my colleague, although I do not know what his views of the matter are.

I believe the importance of the milling interests of this country warrant some relief as against the duty now imposed upon Canadian wheat. At the same time, I realize that whatever the committee recommends will undoubtedly be adopted. Therefore I shall not detain the Senate with either discussing the question or asking for a roll call. But I have stood up in the northwestern country until I have seen mills go into Canada; I have seen great manufacturing enterprises involving the manufacture of farm machinery go to Canada; and I believe that in a little while, unless some relief can be afforded, either the flouring mills or what would naturally be added to the capacity of those mills in view of the growing product of the country will be seen established beyond the Canadian boundary.

If I thought it would do any good to detain the Senate with an argument upon this question, I should do so. I realize, however, in view of the experience of the past, that it would do no good.

The VICE-PRESIDENT. The question is on agreeing to the amendment.

Mr. BACON. I hope the Senator from North Dakota will explain it to us a little bit. Some of us are not familiar with it.

Mr. ALDRICH. Mr. President, I desire to say in this connection that the Senator form Indiana [Mr. BEVERIDGE] has given notice of a new drawback provision, which he has not yet prepared, I believe.

Mr. BEVERIDGE. No.

Mr. ALDRICH. He intends to offer it to-morrow, before the bill goes into the Senate.

Mr. BEVERIDGE. I shall be ready to offer it to-morrow. If the amendment is now adopted, I shall be glad if the Senator from Rhode Island will agree that it may be reopened for the purpose of offering it then.

Mr. McCUMBER. I do not care about debating this matter, if we are ready to vote on it.

Mr. BACON. I simply desire a word of explanation as to what it is.

Mr. McCUMBER. I can give the Senator an idea of what it is. It simply presents the question whether or not, in my section of the country, at least, we shall impose a duty upon grain, and then destroy the benefits of the duty by a drawback which will allow the free importation of the entire Canadian grain crop into the United States.

I will call the Senator's attention to the fact that in 1904 we imported only about 6,000 bushels of wheat from Canada. After the 30th of June, 1904, we raised a short crop in the United States; and the price of the grain of the United States averaged from about 20 to as high as 26 cents a bushel more than that of the Canadian grain. Immediately the 6,000 bushels of import jumped up to 3,102,000 bushels—enough to knock down the price of grain in all that part of the country where the imports were allowed. Then we went back to normal conditions again, and reduced the importation to about 6,000 or 7,000 bushels.

So the Senator can easily see that if we allow the drawback there is certainly no benefit whatever in providing for the tariff.

Then I wish to call the attention of the Senator to another fact: We are exporting from 50,000 to 100,000 bushels of wheat, aside from flour, to foreign countries. Our American millers certainly need not complain as long as there is wheat in the United States which they do not grind and ask to import some other grain that they may grind it in the United States as long as we are importing that amount.

I could discuss this matter at considerable length, but I think the Senate fully appreciates it and understands that as the law stands it is equivalent to no tariff upon grain.

Mr. BACON. Mr. President, I do not propose to antagonize this proposition particularly. But if I understand the Senator correctly, the effect of the present law is that at a time when in his particular section there was not enough wheat grown for the people to eat, the people got it a good deal cheaper than they would have if the change is made which the Senator suggests.

Mr. McCUMBER. There was enough produced to eat, because we were exporting grain at that time. But I want to call attention to the fact that the millers are getting into a little trouble on this very proposition. Some of them wanted the drawback provision; but, as suggested by the Senator, when the original bill was passed it was understood that the drawback would apply only to those things which could be identified after they had been inserted in the new article. The Secretary of the Treasury gave a different construction, however, and allowed the importers of wheat to manufacture it into flour, and to keep an account of the flour and of the wheat that went into the flour, and identify it in that way. But soon that decision led the Treasury Department into another decision; and that other decision was that you could import flour itself, and mix it with other flour, export the flour, and get the rebate on it again. So you could take a thousand barrels of Canadian flour and mix it with a single barrel of American flour, and get your rebate on the entire amount of flour imported from Canada.

The millers did not like that proposition, and wished to change it so that they will get the benefit, and not the blenders of the flour. It simply illustrates the fact that there should be no drawback whatever upon wheat or upon flax.

Mr. GAMBLE. Mr. President, when paragraph 262, which applies to flax, was reached, the amendments proposed by the committee were agreed to, but the provision as to drawback was stricken out. It was understood that when this matter should be taken up in connection with the general administrative features this subject could be returned to; but I rise to say that I am entirely satisfied with the amendment proposed by the Senator from North Dakota, which gives the relief called for. The Northwest is greatly interested in the production of flax and in its manufacture, and I think it is a wise thing that the provision should pass. I may say further that I had intended to submit an argument in behalf of it, but at this time I will not detain the Senate.

Mr. OVERMAN. Mr. President, I offer the amendment which I send to the desk.

The VICE-PRESIDENT. The Senator from North Carolina offers an amendment to the amendment, which the Secretary will report.

The Secretary read as follows:

Exporters of cotton which has been baled in the United States, and in the baling of which imported hoop or band iron, or hoop or band steel, commonly called cotton ties for baling cotton, has been used, shall, upon satisfactory proof, under such regulations as the Secretary of the Treasury shall prescribe, that such imported hoop or band iron, or hoop or band steel, has been used in the baling of such cotton, have refunded to them from the Treasury the duties paid on the hoop or band iron, or hoop or band steel, so used in the baling of such exported cotton.

Mr. ALDRICH. I think that could be done under the existing law. But I have no objection to all these amendments going in, and the committee will carefully consider their effect.

Mr. BURTON. It seems to me this makes an absurd proposition more absurd. If we are to have a general rule, let us observe it. What have the millers done that they should be discriminated against in this way? If we are to have a law in regard to drawbacks, let us enforce it without discrimination. There might be some cases wherein a great monopoly had the lead in the manufacture of a certain article, and some such exception would have a rational basis. But no such exception exists in the case of the milling industry.

The VICE-PRESIDENT. The question is on agreeing to the amendment to the amendment.

The amendment to the amendment was agreed to.

The VICE-PRESIDENT. The question now is on agreeing to the amended amendment.

The amendment as amended was agreed to.

Mr. ALDRICH. Mr. President, there are two or three other matters, one of them rather important, as to which the com-

mittee have not thought it necessary to adopt the House provisions or to adopt any amended provisions.

One is with reference to bonds to be issued for the Panama Canal and for restrictions upon its cost and giving the Government the right to issue $250,000,000 of certificates of indebtedness instead of $100,000,000, as now provided by law. The condition of the Treasury is such, and will be such until Congress shall meet again, that it will not be necessary to provide now for a different character of bonds or for an additional amount of bonds. Under the provisions of existing law certificates of indebtedness to the extent of $100,000,000 can be issued if necessary. For the last two months the receipts of the Treasury have been equal to its disbursements; and it is perfectly clear to my mind that no harm can come from continuing existing conditions until the meeting of Congress in December. It will then be necessary to take up questions involving the cost of the canal, the policy as to issuing bonds for the cost of the canal, including its purchase, and as to the character of the bonds which shall be issued. I think it must be evident to everyone that we shall have to provide for an additional class of bonds for this purpose.

The question of the issue of bonds is of course also involved in any changes which may take place in our monetary affairs. I hope the Monetary Commission will be able, at some time during the next session, to make at least a preliminary report on the important matters committed to it. This will probably involve some different provisions with reference to the character of United States bonds to be issued hereafter.

The committee have thought it desirable to strike out all of the provisions contained in the House bill with reference to bonds and to additional certificates of indebtedness, and as to the cost of the Panama Canal, as they are not strictly matters which should have consideration in this bill, and would certainly lead to a discussion of some length as to the character of the provisions to be inserted. Inasmuch as no harm can come to the Treasury along this line between now and December—I feel very positive on that point—the committee believes those matters should be left until the next session of Congress.

There are two or three other matters that the committee will report upon to-morrow morning. One has reference to certain provisions in regard to taxes upon foreign vessels, and matters of that kind. That subject is in charge of the Senator from Massachusetts, who is not now in his seat, but who will be here to-morrow morning.

The committee have also had under consideration the amendment offered by the Senator from Indiana [Mr. BEVERIDGE] with regard to an increase in the tobacco tax, and they will be ready to report upon that matter to-morrow morning. They have also had under consideration some provisions in regard to taxes on leaf tobacco, offered by the Senator from Kentucky [Mr. PAYNTER], and we hope to report upon those to-morrow morning.

With these exceptions the committee have no further recommendations to make for action in Committee of the Whole, and I very strongly hope that at a very early hour to-morrow we shall be able to report the bill to the Senate.

Mr. BACON. Mr. President, I wish to make an inquiry of the Senator. I recall that a few days since the Senator from Indiana [Mr. BEVERIDGE] made a very pertinent suggestion, as it occurred to me, to the effect that the bill be reprinted in such a way that we will be enabled to look at it and at once determine what changes have been made.

Mr. ALDRICH. The experts of the committee have been following and keeping track of the changes that have been made, and I am hopeful that not later than day after to-morrow we shall be able to furnish the Senate with a comparison of the kind indicated. The Senator was desirous of having, as I remember, a comparison between the existing law and the House provision and the Senate provisions, with possibly a statement of the changes which have taken place in the Senate. That will make four different propositions.

Mr. BEVERIDGE. That will not be very difficult.

Mr. ALDRICH. I think those can be printed in parallel columns without much difficulty.

Mr. BEVERIDGE. That will not be difficult. If the Senator will permit me, I will state that when I made the request, the Senator from Rhode Island asked me to reduce it to writing. I did so, and handed it to the Senator from Rhode Island. It involved what the Senator has already said, and involved one thing which may be a little bit too complex. I refer to the addition to the estimated revenues which we have here of the changes that have been made since the bill came in, up to the present time. Perhaps that is too complex; but I also asked three things that are very easy, and that the experts ought to be able to furnish in a very brief time—an hour or two. I refer now to the number of increases and decreases, and what they are on, that have been made in the Senate since the bill was reported by the committee—the increases over the House bill, and also over the bill as reported by the committee. That is very simple and easy.

Mr. ALDRICH. I think there will be no trouble about that. I think I can also give the Senate at the same time an estimate of the increased revenue which will be derived from the bill as it will be adopted in Committee of the Whole, as compared with the House bill.

Mr. BACON. The Senator will recall that during the progress of this discussion there have been at various times suggestions on his part to the effect that certain matters be reserved for action when we get into the Senate.

Mr. ALDRICH. Yes.

Mr. BACON. For that reason it is a little important that we should be able to get hold of the documents that will show us exactly what has been done in Committee of the Whole.

Mr. ALDRICH. As far as the committee itself is concerned, with two or three unimportant exceptions, the committee will have no suggestions of amendments in the Senate. I think substantially all of the paragraphs, with comparatively very few exceptions, have been attended to by the committee in the Committee of the Whole; and, of course, I understand that other amendments may be offered. I hope that there will not be many of them.

Mr. BACON. I do not think there will be any amendments offered which are going to lead to any great amount of discussion; but there are some matters which have been discussed and which have been passed over, largely, by——

Mr. ALDRICH. By general consent.

Mr. BACON. By the suggestion of the chairman himself.

Mr. ALDRICH. Yes.

Mr. BACON. And it is very important that we should be able to see what is the status of the bill as it has been worked upon by the committee in the Committee of the Whole.

Mr. LA FOLLETTE. Mr. President, I wanted to inquire of the Senator from Rhode Island whether the Senate would be furnished with the reprint of the bill and the other information indicated by the Senator before the bill is taken up in the Senate?

Mr. ALDRICH. We can order a reprint of the bill to-night.

Mr. BEVERIDGE. I will say for the Senator's information that I have spoken to the Senator from Rhode Island about this, and that my request, which was made several days ago, will be complied with, so as to have the document on the Senators' desks to-morrow morning.

Mr. ALDRICH. I am not quite sure whether we can get that to-morrow morning, but we will get it to-morrow as early as possible during the day.

Mr. LA FOLLETTE. The Senator will not take the bill up in the Senate until we have that information and a reprint of the bill, I take it?

Mr. ALDRICH. Well, we can have a reprint of the bill. I do not think that will take long.

Mr. BEVERIDGE. Did the Senator from Wisconsin understand what my request was?

Mr. LA FOLLETTE. No; I did not.

Mr. BEVERIDGE. Then, with the permission of the Senator from Rhode Island, I will state to the Senator from Wisconsin that I requested, and the Senator from Rhode Island reduced my request to writing, that the Finance Committee should do the following things for the information of Senators:

First, that there should be printed in parallel columns, in parallel sections, the present law, the House bill, the bill as reported to the Senate by the Finance Committee, and the bill as now amended, so that we may see at a glance, each in different type, just what are the changes in language. That is No. 1.

Second, I asked that the estimated revenues, this large document that is on Senators' desks, should have added to it, under any article where a change has been made, just what the change is; but I suppose that is too complex.

I asked, third, that a separate document be prepared which would show the increases and decreases that we have made in the House bill up to the time it goes into the Senate, and also over or under the bill that was reported by the committee in the first place.

I understand the Senator from Rhode Island to say that the first and the third of those requests would be prepared for us to-morrow morning. In that way we can see at a glance what we shall be interested to know.

Mr. ALDRICH. Mr. President, I will say to the Senator from Wisconsin and the Senator from Indiana that we could do that, perhaps, more quickly than anything else with this volume which I have in my hands, containing the House provi-

sions, the present law, and the recommendations of the Senate committee.

Mr. BEVERIDGE. Yes; so half of your work is already done.

Mr. ALDRICH. We can put right next to that the action of the Senate, so that one can see at a glance just what the House bill was, what the present law is, what the first recommendation of the committee was, and what the final action of the Senate has been; and that can then be printed in this form.

Mr. BEVERIDGE. It is perfectly immaterial in what form it is printed, so that that information can be laid before the Senate. I think myself that parallel columns would be a better arrangement, but that is a mere matter of device.

Mr. ALDRICH. It would take a good deal longer to have parallel columns, because this matter is already in type.

Mr. BEVERIDGE. The substance is the thing. What I wanted was to see at a glance the present law, the House bill, the bill the committee reported, and the bill as it now stands.

Mr. ALDRICH. The committee will consider itself instructed to have that done.

Mr. BEVERIDGE. Very well.

Mr. ALDRICH. At just the earliest moment possible.

Mr. BEVERIDGE. And the additional document about the increases and the decreases in the items in which they have occurred over and under the House bill and over and under the bill as reported to the Senate in the first place.

Mr. CULBERSON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Rhode Island yield to the Senator from Texas?

Mr. ALDRICH. I was about to ask that the bill be reprinted now in the form in which it is, with the amendments made as in Committee of the Whole.

The VICE-PRESIDENT. Is there objection?

Mr. CULBERSON. Before that question is put I desire to say that the Senator from Georgia [Mr. BACON] a few moments ago made an inquiry of the Senator from Rhode Island about the question of drawback. As I understood the result of the colloquy, it amounted to this: The Finance Committee of the Senate had recommended that the House provisions be stricken out except as to the existing law.

Mr. ALDRICH. Oh, no. The House provisions were to be stricken out absolutely. That allows the existing law to stand.

Mr. CULBERSON. What I wanted to know is with reference to the question of drawbacks. If we adopt the course suggested by the Committee on Finance, how will we leave the question of the right of the Standard Oil Company to a drawback on tin plate?

Mr. ALDRICH. Just as it is now. It interferes with the rights of no one. It changes the rights of no one.

Mr. CULBERSON. I have the figures somewhere, but they are not convenient. Does the Senator know what amount of drawbacks the Standard Oil Company receives annually from this source?

Mr. ALDRICH. I do not. It depends entirely, of course, upon the extent of their business.

Mr. CULBERSON. I have the figures in my locker in the cloakroom, and they are inaccessible now, but my recollection is that it amounts to approximately a million dollars annually.

Mr. ALDRICH. I am not sure about that. Of course, the Standard Oil Company and everybody else——

Mr. NELSON. Mr. President, I had occasion to look up the matter of drawbacks some time ago, and my recollection is that the total amount of duties under the drawback clause is somewhere between six and seven million dollars on everything.

Mr. ALDRICH. I want to say that, in my judgment, the drawback provisions of the existing law are among the most beneficent of its provisions. There is a general feeling, I think, all over the country that we ought to do whatever we can to encourage the exportation of American products, and, beyond that, to give employment to American mills in the manufacture of products for exportation. I think that the drawback provisions of the present law have had a very beneficial effect. Of course the drawback provisions of the House bill go much further, and would necessarily involve a radical change in policy.

I do not know about the amount of drawbacks that have been paid by any individuals or by any corporations. All of them have been paid under the provisions of the law, and some companies, of course, are doing a much larger export business than others. I assume it is not the desire or purpose of the Senator from Texas or any other Senator to undertake to destroy the business of exporting oil. I do not think his State or any other State of this Union——

Mr. BEVERIDGE. Is the Senator discussing oil?

Mr. ALDRICH. I am answering a question asked me by the Senator from Texas.

Mr. CULBERSON. The Senator is answering the question and then endeavoring to explain it away.

Mr. ALDRICH. I am not endeavoring to explain it away.

Mr. CULBERSON. He is arguing against the logic of the question. I have no disposition to bring up the matter now, except to state the fact that the right of the Standard Oil Company to the drawback to which I have alluded, amounting to about a million dollars a year, is given by the action of the committee, and I reserve the right, in order that there may be no misunderstanding, to offer an amendment in the Senate.

Mr. ALDRICH. Does the Senator think the Standard Oil Company ought to be treated differently from other American citizens?

Mr. CULBERSON. I do not know but that it ought to be.

Mr. ALDRICH. The Senator was making his statement of the matter in the view that one class of citizens ought to be picked out.

Mr. CULBERSON. I think any monopoly ought to be treated differently from a citizen endeavoring to obey the laws of the United States.

Mr. ALDRICH. I do not think the Standard Oil Company have a monopoly of the exports of oil.

Mr. CULBERSON. The Standard Oil Company are reaping the benefit of an unequal law, a law that was possibly devised for its special benefit.

Mr. ALDRICH. I remember very well hearing Mr. Tarbell make a statement before the Committee on Finance, in which he stated that a large number of independent oil producers are exporting oil under the same conditions the Standard Oil Company are. But I have nothing to say about the Standard Oil Company one way or the other. They are citizens of the United States, and so far as their export business is concerned, they are engaged in a perfectly legitimate business transaction, and entitled to the same treatment other people are.

Mr. GAMBLE. I have before me the report of the Department of Commerce and Labor, which gives the articles exported for the purpose of drawback for the year 1908. The total amount is $6,637,602. I find that the drawback on tin manufactures under the term "cans," which, perhaps, would reply to the inquiry made by the senior Senator from Texas, is $2,218,002.

Mr. SHIVELY. Mr. President, while I do not approve of drawback provisions generally, I do say that neither the present law nor the proposed provision is on its face unequal in its benefits as among different exporters. The law is unequal in its effect, but not by reason of any inequality on its face. Its inequality attends rather the nature of the cases arising under it. For example, thousands of American farmers are engaged in what is called "intensive agriculture." They raise and can small fruits, vegetables, and other food products for both the domestic and the export trade. When they export their products in wrappers made from imported tin plate, they are entitled, under the drawback provisions of the law, to receive from the United States Treasury 99 per cent of the duty paid on the tin plate used in making the cans or wrappers. But in practice this drawback avails the farmer nothing. The red tape and expense of preparing, presenting, and having allowed a small claim are as great as in the case of a large one, the result being that the small importer finds the drawback eaten up by the expense of securing its payment. It falls out that the millions of dollars annually paid out as drawbacks go to a few exporters, while little or nothing goes to the average exporter. This consequence, I repeat, does not grow out of inequality of treatment as among exporters on the face of the statute, but results from proportional inequality of burdens attending its application in practice.

Mr. ALDRICH. There are certain Senators upon the other side who are always anxious to have something done to hurt monopolies. I want to suggest to the Senator from Texas and the Senator from Indiana, if they do not already know, that there is only one concern making tin plate in the United States. If they are anxious to benefit that one concern, that is all right; but when you are talking about monopolies, the tin-plate manufacture in the United States is entirely in the hands of one concern. I do not know whether that concern are asking to be benefited by the abolition of drawbacks or not, but I do know that the commerce of the United States and the business of the United States are greatly benefited by the drawback provisions, and I should be very sorry to see Congress for any reason restrict them.

I am not in favor of an enlargement as proposed by the House committee, because I think it goes too far, but I think it

would be a very great mistake for any reason or for any purpose to change the drawback provisions of existing law, and especially that we should change them as to one company for the benefit of another. I do not myself believe in legislating that way.

The VICE-PRESIDENT. Is there objection to the request of the Senator from Rhode Island for a reprint of the bill?

Mr. ALDRICH. It has been suggested to me that possibly we ought to wait until the bill is reported to the Senate for a reprint.

Mr. GALLINGER. I think we had better wait.

Mr. ALDRICH. I hope it will be reported early to-morrow morning. That is my present hope and purpose. I ask that whenever the bill shall be reported to the Senate there may be a reprint made.

The VICE-PRESIDENT. Is there objection to that modification of the request?

Mr. CRAWFORD. Why wait until the bill gets into the Senate?

Mr. ALDRICH. Otherwise there might be two or three prints. It multiplies the document, that is all. If the Senator desires, we can have a reprint.

Mr. CRAWFORD. It is not anticipated that any changes will be made after these two items have been disposed of.

Mr. ALDRICH. That is what I meant. It is my intention——

Mr. CRAWFORD. Why should you wait until after the bill gets into the Senate?

Mr. ALDRICH. No; the Senator misunderstands my request. It is that whenever those paragraphs are adopted, then we will have a reprint of the bill.

The VICE-PRESIDENT. Is there objection? The Chair hears none, and the order will be agreed to.

Mr. SCOTT. Mr. President, I want to say that I am very sorry at times to see a feeling of hatred, I may say, or a spirit of vengeance manifested against corporations doing business in a large way. The Standard Oil Company appears to be the bogy man at which everybody takes a kick. In my State since we refused to put a duty on oil the other day oil has been reduced 15 cents a barrel. We have 25,000 people in the State who are interested in the independent production of oil.

I am very sorry that the feeling is so intense against the Standard Oil Company that apparently the Senate is not willing to do justice to the independent operators. The State of Kansas has driven the Standard Oil Company out of that State, and they have established independent refineries as well as independent producers. They are laying pipe lines and the work of competition is going on. But the action of the Senate, the final ultimate passage of the tariff bill without putting a duty on oil to protect the independent operators against this monopoly Senators are so terribly incensed against, I think would be a great blow at my people and the people of many other States.

We have in West Virginia discarded the little log cabin for a beautiful little frame cottage. And the children, from the benefits of the production of oil, are being sent to school. The rising generation in West Virginia is being very much benefited by the production of oil in West Virginia, and the people are building nice, beautiful homes; they are rearing their children in the way they should be raised; they are sending them to school.

I stand here protesting against the prejudice that apparently crops out here on all occasions against this great monopoly, and the prejudice being so great that it may do a great injustice, fellow-Senators, to the independent producers of my State and of other States that are producing oil.

I am as sure as that I am standing on this floor that the Standard Oil Company does not want a duty on oil. I am absolutely satisfied of it.

I am making these remarks now preparatory to what I intend to try to do when we get the bill into the Senate, and that is to try to convince enough Senators to help me put at least some kind of a duty on oil to protect the independent producers in this country against the Standard Oil Company.

Mr. BACON. Mr. President, just one word, as I had made allusion to the Standard Oil Company, or asked a question about it rather, as to the countervailing duty. I want to state to the Senator from West Virginia exactly the reason why I made the inquiry. I was not willing that anything should be done which would restore the provision of the Dingley law or which would affect the price of oil. My reason for it was this: I have not made any investigations myself, but I recollect reading a very interesting speech made in the House of Representatives by a Representative from Wisconsin—I think, Mr. KÜSTERMANN—in which he found what he denominated to be the "joker" in the Dingley law relative to the Standard Oil Company, the provision under which a duty was imposed upon oil importations in this country when it came from a country which itself imposed any duty upon oil.

The fact was pointed out that under that provision, as Russia had a duty upon imports of oil into that country, the Russian oil can not be imported into this country except it paid a corresponding duty.

The Representative went on from the figures to show that in consequence of that, while the Russian oil could not compete with the Standard Oil product or the oil product of this country in America, it did compete with it in Great Britain, and that in consequence of that fact the Standard Oil Company sold its oil in Great Britain at a very much less price—I have forgotten how much, but it was sold for several cents a gallon less than it was sold in this country. Mr. KÜSTERMANN, from the figures he had obtained as to the amount imported and sold in Great Britain and the price at which it sold there, showed that a great many millions of dollars more had been paid to the Standard Oil Company for the oil sold in the United States than for the same amount that had been sold in Great Britain. I had no other purpose but simply to guard against that.

Mr. SCOTT. I wish to ask the Senator before he sits down to suppose, for instance, that one great concern controlled in a measure the entire cotton production of this country and yet the Senator in his State had some independent cotton producers, would he not think it hard if there was not some way by which his independent cotton growers could be protected?

Mr. BACON. It is very hard to draw comparisons of that kind, because there are no conceivable circumstances under which the tariff can affect, either beneficially or otherwise, the cotton crop except in the burden imposed upon those who produce it.

Mr. SCOTT. Take any other article that is produced.

Mr. BACON. Mr. President, I did not rise for the purpose of discussing that, but the Senator expressed himself rather extremely. He said there seemed to be an expression of hate whenever the name was mentioned. I was pointing out to him that I was not influenced by anything of that kind, but I had a substantial reason for it; that I was unwilling there should be a law under which the Standard Oil Company could sell to the people of Great Britain oil at several cents per gallon less than it sold to the people of the United States. That is the long and short of it.

Mr. SCOTT. I ask the Senator how we can regulate that any more than we can sewing machines sold for less in Europe than in this country.

Mr. BACON. We have regulated it in this bill, because we have no such provision in the bill as the provision in the Dingley law to which I have referred. We have expressly cut it out; and thus there is no danger that Russian oil is going to be brought to this country to compete with American oil; but if American oil is sold for less in England than it is sold for in this country, and the ports are open to the world, there will be competition. That is all there is in it.

Mr. SCOTT. If the Senator from Georgia will read the hearings before the Ways and Means Committee, he will find that it is a different grade of oil that is sold in England from the grade that the Standard Oil sells here.

But I am not here to defend the Standard Oil Company. I am here to defend the poor independent operator in my own State, who is being deprived of 15 cents a barrel on his product since you refused to put a duty on oil.

Mr. BACON. There was nothing said about independent oil which called forth any particular hostility to an enterprise of that kind.

Mr. FRYE. Mr. President, I should like the attention of the Senator from Rhode Island. I appeared before the committee in relation to an amendment touching tonnage taxes, and subsequently offered an amendment which is on the table. I understood from what the Senator said a few moments ago that that was still under consideration by the committee. If the committee is ready to report that amendment, of course that is more satisfactory to me than to offer it myself; but I wish the opportunity, if the committee does not report it, to offer it in the Committee of the Whole.

Mr. ALDRICH. I would much prefer that the Senator should offer it himself. It is one of those questions on which I imagine the Senate will vote with the Senator from Maine. Upon all shipping questions they follow his lead almost implicitly.

I should prefer that the Senate should pass upon it, as the committee are rather unwilling to take up any new questions. It is a question that hardly belongs to a tariff bill. I should prefer to have the independent action of the Senate, and I would prefer to have some sort of a limitation fixed upon the

time to be taken in its consideration. I do not know that any Senator would object to it, but it is not strictly a matter for a tariff bill.

Mr. FRYE. The senior Senator from Massachusetts [Mr. LODGE], a member of the committee, desired to offer the amendment himself, and I am entirely willing that he shall if he returns in season to do it; but if he does not, I certainly shall offer it myself.

Mr. GALLINGER. Mr. President, I had printed a proposed amendment increasing the duty on malt liquors which I have not yet formally offered. Several Senators within the last hour have inquired of me what disposition I proposed to make of that amendment. I simply desire to suggest this evening that at some time to-morrow, during the further consideration of this bill, that amendment will be offered, and it will, I hope, be agreed to.

Mr. CRAWFORD. Mr. President, has the chairman of the Finance Committee anything particular to present before adjournment?

Mr. ALDRICH. No, I have not, and I was about to move that the Senate adjourn.

MISSOURI RIVER BRIDGES.

Mr. CRAWFORD. Then I ask unanimous consent for the consideration of a measure, if I may. It is a bill authorizing the construction of a railroad bridge across the Missouri River in my State. There is no interest in it outside; there can not possibly be. The time within which it must be constructed under the former act has transpired, and the work has stopped on that account. The company is very anxious to proceed with the work.

The PRESIDING OFFICER (Mr. KEAN in the chair). The bill is on the calendar?

Mr. CRAWFORD. It is Senate bill 2459. It has been reported by the Committee on Commerce and is on the calendar.

The PRESIDING OFFICER. The Senator from South Dakota asks unanimous consent for the consideration of a bill, which will be read for the information of the Senate, if there be no objection.

The Secretary read the bill (S. 2459) authorizing the Minnesota, Dakota and Pacific Railway Company to build a bridge across the Missouri River.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. SCOTT. Mr. President, do I understand that by entering upon the consideration of this bill, the agreement is set aside that there would be no business taken up except the tariff bill?

Mr. ALDRICH. Mr. President, I do not understand that this is a precedent. The Senator from South Dakota [Mr. CRAWFORD] informed me that it is important this bill shall be passed. I thought perhaps we might make an exception in this case.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill, which had been reported from the Committee on Commerce with an amendment, to strike out section 1, as follows:

That the Minnesota, Dakota and Pacific Railway Company, a corporation organized under the laws of the State of South Dakota, its successors and assigns, be, and they are hereby, authorized to construct, maintain, and operate a railway bridge and approaches thereto across the Missouri River between the mouth of the Moreau River and the south line of Walworth County, in the State of South Dakota, in accordance with the provisions of the act entitled "An act to regulate the construction of bridges over navigable waters," approved March 23, 1906, it being the purpose of this act to extend in effect, operation, and force the special act entitled "An act to authorize the Minnesota, Dakota and Pacific Railway Company to construct a bridge across the Missouri River," approved May 14, 1906, as required by the provisions of the act of March 23, 1906, above referred to.

And in lieu thereof to insert:

That the act entitled "An act to authorize the Minnesota, Dakota and Pacific Railway Company to construct a bridge across the Missouri River," approved May 14, 1906, is hereby reenacted and so amended as to extend the time for commencing and completing the construction of the bridge therein authorized to one year and three years, respectively, from the date of approval of this act.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to revive and amend an act entitled 'An act to authorize the Minnesota, Dakota and Pacific Railway Company to build a bridge across the Missouri River.'"

Mr. WARNER. I ask unanimous consent for the present consideration of the bill (S. 1441) to authorize the construction of a bridge across the Missouri River and to establish it as a post-road.

The PRESIDING OFFICER. The Senator from Missouri asks unanimous consent for the present consideration of the bill named by him.

Mr. CULBERSON. Mr. President, we shall assume that to a general extent the rule against the passage of any legislation other than the tariff bill and the census bill has been relaxed.

Mr. ALDRICH. Mr. President, I am not willing to admit that, but I do think, if Senators have bills that they consider very important, when we are not engaged——

Mr. CULBERSON. I say we will assume that to a certain extent the rule is relaxed—that is, when Senators present matters that they consider of extreme importance, as suggested by the Senator from Rhode Island.

Mr. ALDRICH. I think that is nothing but fair, unless there is some objection on the part of Senators.

Mr. CULBERSON. I have no objection to either one of the bills, but I think that all Senators should be treated alike as to bills of this character.

Mr. ALDRICH. There is no controversy on that subject.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. ALDRICH. What is the bill?

Mr. WARNER. It is a bridge bill, extending the time for the completion of a bridge.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill, which had been reported from the Committee on Commerce with an amendment, to strike out all after the enacting clause and to insert:

That the act of Congress entitled "An act to authorize the construction of a bridge across the Missouri River and to establish it as a post-road," approved May 16, 1906, be, and is hereby, reenacted and so amended as to extend the time for commencing and completing the structure therein authorized one and three years, respectively, from May 16, 1909.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to reenact and amend an act entitled 'An act to authorize the construction of a bridge across the Missouri River and to establish it as a post-road.'"

JOHN RIVETT.

Mr. BURKETT. I ask unanimous consent for the present consideration of the bill (H. R. 9609) to grant to John Rivett privilege to make commutation of his homestead entry.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. SHIVELY. Permit me to inquire if this bill has been before a committee?

Mr. BURKETT. Yes; and a similar bill was passed, I will say to the Senator, at the last session, but in some way or other the letter "T." got in between the name "John" and the name "Rivett." This bill is in the exact form of the bill passed at the last session with the letter "T." stricken out.

Mr. SHIVELY. Has it passed both Houses?

Mr. BURKETT. Yes; it has. I have the act as we passed it here on the 24th of February, 1909.

Mr. CULBERSON. I can not refrain from calling attention to this as an enlargement of the field of legislation upon which we are entering, and I assume there will be no objection to unanimous-consent-agreement matters being presented from all sides of the Chamber. The other two bills were bridge bills, and this is a private bill.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It proposes to grant to John Rivett the privilege to make commutation of his homestead entry of the southwest quarter of section 28, township 22 north, range 50 west, sixth principal meridian, in the State of Nebraska, as provided by law for the making of commutation of homestead entries, and repeals Private Act No. 167, for the relief of John T. Rivett, approved February 24, 1909.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

THE TARIFF.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 1438) to provide revenue, equalize

duties, and encourage the industries of the United States, and for other purposes.

Mr. ALDRICH. I ask that the sections of the tariff bill following the free and dutiable list may be numbered consecutively by the Secretary.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALDRICH. I move that the Senate adjourn.

The motion was agreed to; and (at 5 o'clock and 35 minutes p. m.) the Senate adjourned until to-morrow, Tuesday, July 6, 1909, at 10 o'clock a. m.

HOUSE OF REPRESENTATIVES.

MONDAY, *July 5, 1909.*

The House met at 12 o'clock m.

Prayer by the Chaplain, Rev. Henry N. Couden, D. D., as follows:

Infinite and eternal source of every clear vision, of every noble impulse, of every high and holy aspiration, our God and our Father, we draw near to Thee in gratitude and praise for all the blessings Thou hast bestowed upon us. Especially do we thank Thee for our Republic, a precious heritage from our fathers, whom Thou didst inspire to conceive, resolve, and maintain that immortal instrument, the Declaration of Independence, which brought us liberty and made us a free people. We recall this day with grateful hearts their patriotic zeal, their courage and devotion, their sacrifices and heroism, and pray that we may emulate their virtues, holding high the banner which they carried to victory in a holy cause; that we may be known throughout the world as a home-loving people, a peace-loving people, a justice-loving people, a God-loving people, marching on to greater achievements in all the peaceful pursuits of life; that our influence may ever be on the side of right and truth and justice, "Each for all and all for each;" that Thy kingdom may come and Thy will be done in earth as it is in heaven.

And now, O Father, let Thy blessing be upon the Member from the State of Washington, nigh unto death; restore him, O we beseech Thee, to health and strength, that he may again serve Thee and his people upon the floor of this House, and we will give all praise to Thee through Jesus Christ, our Lord. Amen.

The Journal of the proceedings of Thursday, July 1, 1909, was read and approved.

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES.

A message, in writing, from the President of the United States was communicated to the House of Representatives by Mr. Latta, one of his secretaries, who also informed the House of Representatives that the President had, on July 2, 1909, approved and signed bills of the following titles:

H. R. 1033. An act to provide for the Thirteenth and subsequent decennial censuses.

H. R. 10887. An act to make Scranton, in the State of Mississippi, a subport of entry, and for other purposes.

MARCUS RAMADANOVITCH.

The SPEAKER laid before the House the following message from the President of the United States, which was read and, with the accompanying papers, referred to the Committee on Appropriations and ordered printed (H. Doc. No. 81):

To the Senate and House of Representatives:

I transmit herewith the report of the Secretary of State, with accompanying papers, relative to the claim of Marcus Ramadanovitch, alias Radich, a Montenegrin subject, for property stated to have been appropriated by the United States military authorities in Texas during the month of October, 1865.

In view of the statement by the Secretary of State that the claim appears to be a meritorious one, I recommend that an appropriation be made to pay it.

WM. H. TAFT.

THE WHITE HOUSE, *July 5, 1909.*

ADJOURNMENT.

Mr. PAYNE. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to.

Accordingly (at 12 o'clock and 9 minutes p. m.) the House adjourned till Thursday, July 8, 1909.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials of the following titles were introduced and severally referred as follows:

By Mr. WILEY: A bill (H. R. 11192) to reorganize the corps of dental surgeons attached to the Medical Department of the Army—to the Committee on Military Affairs.

By Mr. SPIGHT: A bill (H. R. 11193) to amend the laws relative to American seamen, to prevent undermanning and unskilled manning of American vessels, and to encourage the training of boys in the American merchant marine—to the Committee on the Merchant Marine and Fisheries.

By Mr. LIVINGSTON: A bill (H. R. 11194) to acquire certain land in Cecelia M. Coughlin and others' subdivision of Pretty Prospect and Cliffbourne, in the District of Columbia, for a public park—to the Committee on the District of Columbia.

By Mr. SMITH of Iowa: A bill (H. R. 11195) to establish a fish-cultural station in the western section of the State of Iowa—to the Committee on the Merchant Marine and Fisheries.

Also, a bill (H. R. 11196) for the relief of the New Nonpareil Company, of Council Bluffs, Iowa—to the Committee on Claims.

Also, a bill (H. R. 11197) granting additional compensation to surviving Union soldiers, sailors, and marines who were prisoners of war during the civil war—to the Committee on Invalid Pensions.

Also, a bill (H. R. 11198) to amend the act of February 6, 1907, granting pensions to certain enlisted men, soldiers and officers, who served in the civil war or the war with Mexico—to the Committee on Invalid Pensions.

Also, a bill (H. R. 11199) to simplify the proofs required in applications for pensions where the claimants were prisoners of war—to the Committee on Invalid Pensions.

Also, a bill (H. R. 11200) simplifying the proofs required in applications for widows' pensions—to the Committee on Invalid Pensions.

Also, a bill (H. R. 11201) to create a Tuberculosis Commission—to the Committee on Interstate and Foreign Commerce.

By Mr. WILSON of Illinois: Resolution (H. Res. 82) authorizing the appointment of one additional clerk to the Committee on Enrolled Bills—to the Committee on Accounts.

By Mr. BURNETT: Resolution (H. Res. 83) requesting the Secretary of Commerce and Labor to send to the House of Representatives certain documents—to the Committee on Immigration and Naturalization.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions of the following titles were introduced and severally referred as follows:

By Mr. ANDERSON: A bill (H. R. 11202) granting an increase of pension to Herman R. Ferguson—to the Committee on Invalid Pensions.

By Mr. THOMAS of Kentucky: A bill (H. R. 11203) granting an increase of pension to James Loving—to the Committee on Invalid Pensions.

Also, a bill (H. R. 11204) granting an increase of pension to Clement Brawner—to the Committee on Invalid Pensions.

Also, a bill (H. R. 11205) granting an increase of pension to James H. Ashley—to the Committee on Invalid Pensions.

Also, a bill (H. R. 11206) granting a pension to Laura B. Adams—to the Committee on Invalid Pensions.

Also, a bill (H. R. 11207) granting a pension to F. M. Berry—to the Committee on Invalid Pensions.

Also, a bill (H. R. 11208) granting a pension to Millie Sweatt—to the Committee on Invalid Pensions.

Also, a bill (H. R. 11209) granting a pension to Mahala Faut—to the Committee on Invalid Pensions.

Also, a bill (H. R. 11210) granting a pension to Maggie Evans—to the Committee on Invalid Pensions.

Also, a bill (H. R. 11211) granting a pension to Sarah Mallory—to the Committee on Invalid Pensions.

Also, a bill (H. R. 11212) granting a pension to Anna Briggs—to the Committee on Invalid Pensions.

Also, a bill (H. R. 11213) for the relief of the heirs of Henry H. Johnston—to the Committee on War Claims.

By Mr. BARNHART: A bill (H. R. 11214) granting an increase of pension to William Kreighbaum—to the Committee on Invalid Pensions.

By Mr. BROWNLOW: A bill (H. R. 11215) granting an increase of pension to S. Nations—to the Committee on Invalid Pensions.